

No. 11051 - 11259

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

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SECURITY-FIRST NATIONAL BANK OF LOS  
ANGELES, a national banking association,

Appellant,

vs.

UNITED STATES OF AMERICA and H. F. MET-  
CALF, Trustee in Bankruptcy for the Estate of F. P.  
Newport Corporation, Ltd., a corporation, bankrupt,

Appellees.

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## TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

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FILED

JUL 2 1945

PAUL P. O'BRIEN,

CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS:

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ALLEN T. LYNCH

811 Citizens National Bank Bldg.

Los Angeles 13, Calif. [A\*]

In the District Court of the United States  
Southern District of California  
Central Division

No. 25308-M-In Bankruptcy

In the Matter of

F. P. NEWPORT CORPORATION, LTD.,  
a corporation,

Bankrupt.

[SECURITY-FIRST NATIONAL BANK'S

EXHIBIT NO. 1—BY REFERENCE]

TRUST NO. SS-70401

DECLARATION OF TRUST

This Declaration of Trust made and entered into as of the 1st day of March, 1930, by and between F. P. Newport Corporation, Ltd., (a Delaware Corporation), party of the first part, hereinafter sometimes referred to as the "Beneficiary", Security-First National Bank of Los Angeles, a national banking association, organized and existing pursuant to an Act of Congress of the United States, and having its principal place of business in the City of Los Angeles, County of Los Angeles, State of California, party of the second part, hereinafter sometimes referred to as the "Trustee", and Security-First National Bank of Los Angeles, Banking Department, party of the third part, hereinafter sometimes referred to as the "Payee";

Witnesseth:

That, Whereas, the Beneficiary is now indebted to the Payee in the principal sum of Seven Hundred Sixty Thousand Dollars (\$760,000.00) as is evidenced by a certain promissory note dated March 1st, 1930, made and executed by F. P. Newport Corporation, Ltd., a Delaware Corpo-

ration, in favor of said Payee and delivered by the above named Beneficiary to said Payee in words and figures as follows, to-wit: [126]

“\$760,000.00

Los Angeles, California,

March 1st, 1930

On or before March 1st, 1932, for value received, F. P. Newport Corporation, Ltd., a Delaware Corporation, promises to pay the Security-First National Bank of Los Angeles, a national banking association, Banking Department, or order, at its Security Office, Fifth and Spring Streets, Los Angeles, California, the sum of Seven Hundred Sixty Thousand Dollars (\$760,000.00), with interest from the date hereof until paid at the rate of seven per cent (7%) per annum, payable quarterly, and reasonable attorney's fees if suit be commenced or other proceedings taken to enforce the payment of this note.

Should the interest not be so paid, when due, it shall become a part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States of America, of the present standard. The makers and endorsers of this note hereby waive diligence, demand, protest and notice and consent to extensions of time.

This note is secured by that certain Declaration of Trust issued by the Security-First National Bank of Los Angeles, a national banking association, as Trustee, dated as of the 1st day of March, 1930,



known as its Trust No. SS-70401, which note *os* made and accepted subject to each and all of the terms and provisions of said Declaration of Trust applicable thereto, which terms and provisions by reference are made a part hereof.

F. P. NEWPORT CORPORATION, LTD.

Corporate  
Seal

By F. P. Newport

President

By T. L. Dudley

Secretary"

The Trustee hereunder shall be under no obligation as to the payment of either the principal or interest due the Payee, except as to the applications thereto of moneys [127] coming into its hands for that purpose as hereinafter provided; and

Whereas, by deed dated March 1st, 1930, to be hereafter recorded in the office of the County Recorder of Los Angeles County said F. P. Newport Corporation, Ltd. conveyed, and does hereby grant, unto the Security-First National Bank of Los Angeles, a national banking association, in trust, with power of sale, all that real property situate in the County of Los Angeles, State of California, described as follows:

Group or Parcel 1:      —      Subdivided Property

I.      In Tract No. 250, as per map recorded in Book 15 pages 130 and 131 of Maps, records of said County:

(A) East 50 feet of the West 100 feet of Lot 21;

(B) All that portion of Lot 22 lying Westerly of a line drawn parallel with the Westerly line of Niodrara Drive and distant 189 feet Westerly therefrom;

(22.J)



- (C) All that portion of Lot 103 of said Tract, in the City of Glendale, and a portion of Avenue "F" as vacated by the City of Glendale by Resolution No. 1084, adopted October 9th, 1919, described as follows:

Beginning at a point in the Northerly line of Glorietta Avenue, as shown on Map of Selvas de Verdugo, recorded in Book 37 page 77 of Maps, in the office of the County Recorder of said County, distant thereon South  $88^{\circ} 36'$  West 100 feet from the intersection of the Southerly prolongation of the Easterly line of said Lot 103 with the Northerly line of said Glorietta Avenue; thence along said Northerly line of Glorietta Avenue South  $88^{\circ} 36'$  West 50 feet; thence parallel with the Easterly line of said Lot 103 Northerly  $1^{\circ} 24'$  West 130 feet; thence parallel with said Glorietta Avenue north  $88^{\circ} 36'$  East 50 feet; thence parallel with the Easterly line of said Lot 103 South  $1^{\circ} 24'$  East 130 feet to the point of beginning; (103-C)

- (D) That part of Lot 175 of said Tract in the City of Glendale, described as follows:

Beginning at the Northeast corner of said Lot 175; thence South  $1^{\circ} 24'$  East along the Easterly line of said Lot 175, a distance of 163.46 feet to the Southeast corner of said Lot 175; thence North  $71^{\circ} 31'$  West along the Southerly line of said Lot 175 a distance of 55.00 feet; thence North  $0^{\circ} 20' 7''$  West 155.53 feet to a point on the Northerly line of said Lot 175 distant thereon North  $78^{\circ} 59'$  West 50.00 feet from the Northeast corner of said Lot 175;

thence South  $78^{\circ} 59'$  East 50.00 feet to the point of beginning. (175-A) [128]

- (E) That part of Lot 175 of said Tract in the City of Glendale, described as follows:

Beginning at a point on the North line of said Lot 175 distant thereon North  $78^{\circ} 59'$  West 50.00 feet from the Northeast corner of said Lot 175; thence South  $0^{\circ} 20' 07''$  East 155.53 feet to a point on the Southerly line of said Lot 175 distant thereon North  $71^{\circ} 31'$  West 55.00 feet from the Southeast corner of said Lot 175; thence North  $71^{\circ} 31'$  West 55.00 feet more or less, along the Southerly line of said Lot 175, to a point which is South  $71^{\circ} 31'$  East 59.25 feet from the Southwest corner of said Lot 175; thence North  $0^{\circ} 55' 57''$  East 147.67 feet to a point on the Northerly line of said Lot 175, distant thereon South  $78^{\circ} 59'$  East 50.00 feet from the Northwest corner of said Lot 175; thence South  $78^{\circ} 59'$  East 50.00 feet, more or less, to the point of beginning; and (175-B)

- (F) That part of Lot 175 of said Tract in the City of Glendale, described as follows:

Beginning at the Northwest corner of said Lot 175, thence South  $78^{\circ} 59'$  East along the Northerly line of said Lot 175 a distance of 50.00 feet; thence South  $0^{\circ} 55' 57''$  West 147.67 feet to a point in the Southerly line of said Lot 175, distant thereon South  $71^{\circ} 31'$  East 59.25 feet from the Southwest corner of said Lot 175; thence North  $71^{\circ} 31'$  West 59.25 feet to the Southwest corner of said Lot 175; thence North  $3^{\circ} 56'$  East along the Westerly line of said Lot

175 a distance of 138.75 feet to the point of beginning. (175-C)

- (G) That part of Lot 178 of said Tract in the City of Glendale described as follows:

Beginning at a point on the Southerly line of said Lot 178 distant thereon North  $64^{\circ} 19'$  West 60.00 feet from the Southeast corner of said Lot 178, thence North  $1^{\circ} 00' 54''$  East 151.92 feet more or less to a point on the Northerly line of said Lot 178, distant thereon North  $71^{\circ} 31'$  West 50.00 feet from the Northeast corner of said Lot 178; thence North  $71^{\circ} 31'$  West along the Northerly line of said Lot 178 a distance of 50.00 feet; thence South  $3^{\circ} 46' 15''$  West 142.05 feet, more or less, to a point on the Southerly line of said Lot 178, distant thereon North  $64^{\circ} 19'$  West 120.00 feet from the Southeast corner of said Lot 178; thence South  $64^{\circ} 19'$  East 60 feet to the point of beginning.

(178-B)

- (H) That part of Lot 179 of said Tract in the City of Glendale, described as follows:

Beginning at the Northeast corner of said Lot 179, thence North  $78^{\circ} 07'$  West along the Northerly line of said Lot 179, a distance of 45.60 feet, more or less to a point on the Northerly line of said Lot 179, distant thereon South  $78^{\circ} 07'$  East 140.00 feet from the North-West corner of said Lot 179; thence South  $9^{\circ} 07' 34''$  West 139.24 feet to a point on the Southerly line of said Lot 179, distant thereon South  $81^{\circ} 15'$  East 160.00 feet from the Southwest corner of said Lot 179; thence South  $81^{\circ}$

15' East along the Southerly line of said Lot 179, a distance of 39.18 feet to the point of beginning of a curve concave Southerly, having a radius of 234.64 feet, a radial line from said point bearing South  $8^{\circ} 45'$  West: thence [129] Easterly along said curve a distance of 19.34 feet to the Southeast corner of said Lot 179; thence North  $3^{\circ} 56'$  East along the Easterly line of said Lot 179, a distance of 138.35 feet to the point of beginning. (179-A)

- (I) Those portions of Lot 179 of said Tract in the City of Glendale, described as follows:

(a) Beginning at a point on the Southerly line of said Lot 179, distant thereon South  $81^{\circ} 15'$  East 160.00 feet from the Southwest corner of said Lot 179; thence North  $9^{\circ} 07' 34''$  East 139.24 feet, more or less, to a point on the Northerly line of said Lot 179 distant thereon South  $78^{\circ} 07'$  East 140.00 feet from the Northwest corner of said Lot 179; thence North  $78^{\circ} 07'$  West along the Northerly line of said Lot 179 a distance of 50.00 feet; thence South  $11^{\circ} 09' 57''$  West 142.10 feet, more or less, to a point on the Southerly line of said Lot 179, a distance thereon of South  $81^{\circ} 15'$  East 105.00 feet from the Southwest corner of said Lot 179; thence South  $81^{\circ} 15'$  East along the Southerly line of said Lot 179, a distance of 55.00 feet to the point of beginning. (179-B)

(b) Beginning at a point on the Southerly line of said Lot 179, distant thereon South  $81^{\circ} 15'$  East 105.00 feet from the Southwest corner of said Lot 179; thence North  $11^{\circ} 09' 57''$  East 142.10 feet more or less to a point on the North-

erly line of said Lot 179 distant thereon South  $78^{\circ} 07'$  East 90.00 feet from the Northwest corner of said Lot 179; thence North  $78^{\circ} 07'$  West along the Northerly line of said Lot 179 a distance of 45.00 feet; thence South  $15^{\circ} 05' 37''$  West 145.32 feet, more or less, to a point on the Southerly line of said Lot 179, distant thereon South  $81^{\circ} 15'$  East 50.00 feet from the Southwest corner of said Lot 179; thence South  $81^{\circ} 15'$  East along the Southerly line of said Lot 179 a distance of 55.00 feet to the point of beginning. (179-C)

(c) Beginning at the Southwest corner of said Lot 179, thence South  $81^{\circ} 15'$  East along the Southerly line of said Lot 179 a distance of 50.00 feet; thence North  $15^{\circ} 05' 37''$  East 145.32 feet, more or less, to a point on the Northerly line of Lot 179, distant thereon South  $78^{\circ} 07'$  East 45.00 feet from the Northwest corner of said Lot 179; thence North  $78^{\circ} 07'$  West along the Northerly line of said Lot 179, a distance of 45.00 feet to the Northwest corner of said Lot 179; thence South  $16^{\circ} 56'$  West along the Westerly line of said Lot 179, a distance of 148.40 feet to the point of beginning. (179-D)

(J) That part of Lot 181 of said Tract in the City of Glendale, described as follows:

Beginning at the Southwest corner of said Lot 181; thence South  $81^{\circ} 15'$  East along the Southerly line of said Lot 181 a distance of 56.00 feet; thence North  $19^{\circ} 04' 09''$  East 163.49 feet, more or less, to a point on the Northerly line of said Lot 181, distant thereon South  $78^{\circ} 07'$  East 55 feet from the [130] Northwest corner

of said Lot 181; thence North  $78^{\circ} 07'$  West along the Northerly line of said Lot 181, a distance of 55.00 feet to the Northwest corner of said Lot 181; thence South  $19^{\circ} 15'$  West along the Westerly line of said Lot 181 a distance of 166.64 feet to the point of beginning.      (181-C)

Except that portion deeded to the City of Glendale for street and highway purposes to be known as "Sierra Place".

in Said Tract No. 250

Excepting From All of Said Land / All Water in and Underneath the Same.

- II.      Tract No. 393, in the City of Glendale, in said County and State, as per map recorded in Book 14 page 154 of Maps, records of said County: Lot 39.
- III.     Tract No. 1473, in said County and State, as per map recorded in Book 20 pages 154 and 155 of Maps, records of said County:  
             Lots 66, 75, 76, 192, 193, 194, 195, 196, 205, 206, 207, 208, 209 and 234.
- IV.     Tract No. 2016, in said County and State, as per map recorded in Book 27 pages 16, 17 and 18 of Maps, records of said County:  
             Lot 20 in Block 1; Lots 21, 23 and 28 in Block 4; Lots 22 and 28 in Block 7; Lots 19, 21, 22 and 27 in Block 8; Lot 7 in Block 9; Lots 15 and 21 in Block 20; Lot 17 in Block 22; Lot 4 in Block 23; Lot 15 in Block 28 and Lot 13 in Block 29.

Note: For description of the triangular parcel of land at the Northeast corner of Tract No. 2016 (being part of Lot 6 of a portion of Maria



Dolores Dominguez de Watson allotment)—See paragraph XV, page 4-g hereof) [131]

- V. Tract No. 2052, sheets 1 and 2, in said County and State, as per map recorded in Book 28 pages 67 and 68 of Maps, records of said County:

Lot 16.

- VI. Tract No. 4044, in the City of Glendale, said County and State, as per map recorded in Book 43 page 79 of Maps, records of said County:

Lots 1, 2, 3, 4, 6, 7, 20 and 27.

- VII. Tract No. 5719, in said City of Glendale, County and State, as per map recorded in Book 63 page 53 of Maps, records of said County:

Lots 1, 2 and 3.

- VIII. Tract No. 6158, in said County and State, as per map recorded in Book 137 pages 63 and 64 of Maps, records of said County:

Lots 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 23 and 25 to 52 both inclusive.

- IX. Tract No. 6409, in the City of Glendale, said County and State, as per map recorded in Book 114 pages 3 and 4 of Maps, records of said County:

Lots 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, and 62.

- X. Tract No. 7146, in said County and State, as per map recorded in Book 76 page 15 of Maps, records of said County:

(A) That part of Lot 4 of said Tract, in said County and State, described as follows:

Beginning at a point on the Southerly line of said Lot 4, distant North  $88^{\circ} 36'$  East 40 feet from the Southwest corner of said Lot; thence North  $3^{\circ} 09'$  West parallel with the Westerly line of said lot, 100 feet to a point on the Northerly line of said lot; thence North  $88^{\circ} 36'$  East, along said Northerly line 24.99 feet to the Northeast corner of said lot; thence South  $13^{\circ} 31' 20''$  East along the Easterly line of said Lot 8367 feet to the point of beginning of a curve concave Northwesterly and having a radius of 15 feet; thence Southwesterly along said curve a distance of 26.74 feet to a point on the Southerly line of said Lot 4; thence South  $88^{\circ} 36'$  West 24.84 feet to the point of beginning.

- (B) That part of Lot 5 of said Tract, in said County and State, described as follows:

Beginning at a point in the Northerly line of said Lot 5, distant North  $88^{\circ} 36'$  East 40 feet from the Northwest corner of said Lot 5; thence South  $3^{\circ} 09'$  East parallel with the Westerly line of said Lot 5, a distance of 91.69 feet to a point on the Southerly line of said Lot; thence North  $83^{\circ} 51' 10''$  East along said Southerly line 64.88 feet to the Southeast corner [132] of said Lot; thence North  $13^{\circ} 31' 20''$  West along the Easterly line of said lot, a distance of 72.08 feet to the point of beginning of a curve concave Southwesterly having a radius of 20 feet; thence Northwesterly along said curve a distance of 27.18 feet to a point in the Northerly line of said lot; thence South  $88^{\circ} 36'$  West 32.77 feet to beginning.



- (C) That part of Lot 8 of said Tract, in said County and State, described as follows:

Beginning at a point in the Northerly line of said Lot 8, distant North  $83^{\circ} 51' 10''$  East 90.08 feet from the Northwest corner of said Lot 8; thence South  $3^{\circ} 09'$  East, parallel with the Westerly line of said Lot 8, 83.66 feet to a point on the Southerly line of said lot; thence South  $89^{\circ} 39'$  East along said Southerly line 19.81 feet to the point of beginning of a curve concave Northwesterly and having a radius of 15 feet; thence Northeasterly along said curve a distance of 25.96 feet to a point in the Easterly line of said lot; thence along the said Easterly line North  $8^{\circ} 49' 10''$  West 23.20 feet to an angle point in said Easterly line; thence North  $13^{\circ} 31' 20''$  West 47.40 feet to the Northeast corner of said lot; thence South  $83^{\circ} 51' 10''$  West 24.84 feet to the point of beginning.

- (D) That part of Lot 9 of said Tract, in said County and State, described as follows:

Beginning at the Southeast corner of said Lot 9; thence South  $85^{\circ} 45' 30''$  West, along the Southerly line of said lot, 50.82 feet; thence North  $3^{\circ} 09'$  West, parallel with the Westerly line of said Lot, 108.92 feet to a point in the Northerly line of said lot; thence South  $89^{\circ} 39'$  East along said Northerly line 27.68 feet to the point of beginning of a curve concave Southwesterly, having a radius of 15 feet; thence Southeasterly along said curve a distance of 21.16 feet to a point in the Easterly line of said lot; thence South  $8^{\circ} 49' 10''$  East along said Easterly

line, 89.73 feet to the point of beginning of a curve concave Westerly and having a radius of 212.80 feet; thence Southerly along said curve a distance of 3.50 feet to the point of beginning.

- (E) That part of Lot 12 of said Tract, in said County and State, described as follows:

Beginning at a point in the Northerly line of said lot distant North  $85^{\circ} 45' 30''$  East 79.98 feet from the Northwest corner of said lot; thence South  $3^{\circ} 09'$  East parallel with the Westerly line of said lot, 90.37 feet to a point in the Southerly line of said lot, said point being situated on a curve concave Southerly and having a radius of 145 feet, a radial line from said point bearing South  $9^{\circ} 36' 09''$  West; thence Easterly along said curve a distance of 20.85 feet to the point of beginning of a curve concave Northerly and having a radius of 15 feet, a radial line from said point bearing North  $17^{\circ} 49' 20''$  East; thence Easterly along said curve a distance of 23.97 feet to a point in the Easterly line of said lot, said point being the point of beginning of a curve concave Westerly and having a radius of 212.80 feet, a radial line from said point bearing North  $73^{\circ} 43' 21''$  West; thence Northerly along said curve a distance of 89.71 feet to the Northeast [133] corner of said lot; thence South  $85^{\circ} 45' 30''$  West 50.82 feet to the point of beginning.

- (F) That part of Lot 13 of said Tract, in said County and State, described as follows:

Beginning at a point on the Southerly line of said lot distant North  $88^{\circ} 36'$  East 40 feet

from the Southwest corner of said lot; thence North  $3^{\circ} 09'$  West parallel with the Westerly line of said lot, 125.64 feet to a point in the Northerly line of said lot, said point being situated on a curve concave Southerly and having a radius of 115 feet, a radial line from said point bearing South  $7^{\circ} 09' 33''$  East; thence Easterly along said curve a distance of 47.84 feet to the point of beginning of a curve concave Southwesterly and having a radius of 15 feet, a radial line from said point bearing South  $16^{\circ} 42' 35''$  West; thence Southeasterly along said curve a distance of 24.45 feet to a point in the Easterly line of said lot; thence South  $20^{\circ} 05' 45''$  West along said Easterly line 108.24 feet to the Southeast corner of said lot; thence South  $88^{\circ} 36'$  West 13.03 feet to the point of beginning.

Except all water percolating through all of the said land in said Tract 7146.

- XI. Dominguez Harbor Tract in said County and State, as per maps recorded in Books 12 and 22 pages 14 and 176, respectively, of Maps, records of said County, as follows:

Lot 6 in Block	1,	as	per	map	recorded	in	Book	22	page	176;
Lot 4 in Block	7,	"	"	"	"	"	"	"	"	" ;
Lot 1 in Block	9,	"	"	"	"	"	"	"	"	" ;
Lot 5 in Block	25,	"	"	"	"	"	"	12	"	14;
Lots 4, 7 and 35										
in Block 29,		"	"	"	"	"	"	22	"	176;

- XII. Fernbrook Place, in the City of Glendale, said County and State, as per map recorded in Book 84 page 73 of Maps, records of said County: Lots 1, 2, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22 and 23 in Block "A"; and  
 Lots 3, 6, 11, 12 and 13 in Block "B";  
 Excepting all water in or under said land.

XIII.      Long Beach Harbor Tract, in the City of Long Beach, said County and State, as per map recorded in Book 10 page 142 of Maps, records of said County:

An undivided one-fourth interest in Lot 14 in Block 7, and an entire interest in Lot 5 in Block 20.

XIV.      Selvas de Verdugo, in the City of Glendale, said County and State, as per map recorded in Book 37, pages 77 to 83 inclusive, of Maps, records of said County:

(A) Lot 1 in Block 3;

Lot 12 in Block 5;

Lot 1 in Block 6; [134]

the East 20 feet of Lot 23 in Block 11 (measured at right angles to East line of said Lot 23);

Lot - - - - - 28 in Block 11;

Lots 1 and 4 in Block 18;

Lot 7 in Block 20;

Lot 20 in Block 25 @ Book 44 page 64 of Maps, and

Lots 1 and 21 in Block 26 @ Book 44 page 64 of Maps;

Excepting all water in or under said land.

(B) Selvas de Verdugo, in said City: County and State, as per map recorded in Book 46 pages 23 and 24 of Maps. records of said County;

Lots 1 and 2 in Block 27;

Excepting all waters in or under said land.

(C) Lots 1 and 15 in Block 29 of said Tract;

Lots 1, 2, 3, 7 and 8 in Block 30;

- (D) A portion of Lot 8 in Block 31, described as follows:

The triangular lot commencing South  $53^{\circ} 24'$  East 11.44 feet from the Northeast corner of Lot 13, Block 33, Selvas de Verdugo, in said City, County and State, as per map recorded in Book 54 page 88; thence North  $7^{\circ} 34'$  East 45.75 feet; thence South  $53^{\circ} 24'$  East 22.2 feet; thence South  $36^{\circ} 36'$  West 40 feet to the beginning.

Excepting all waters in or under said land.

- (E) Lot 4 in Block 32 of said Tract, as per map recorded in Book 54 pages 88 and 89 of Maps, and

- (F) Also all that part of Lot 8 in Block 31 of said Tract as per map recorded in Book 46 pages 23 and 24 of Maps, adjoining Lot 4 lying West of the Southerly prolongation of the East line of said Lot 4;

Excepting all waters in or under said land.

- (G) Lot 8 in Block 32 of said Tract, as per map recorded in Book 54 pages 88 and 89 of Maps; Except that portion deeded to the Southern California Edison Company for right of way purposes.

- (H) Lots 3, 4, 6 and 16 in Block 34 of said Tract, as per map recorded in Book 54 pages 88 and 89 of Maps;

Except that portion of Lots 3, 4 and 16 deeded to the Southern California Edison Company for right of way purposes.

Note: Lot 6 in Block 34 is an improved Lot.  
Excepting all waters in or under said land.

- (I) Lots 1, 2, 4 and 6 in Block 36 of said Tract as per map recorded in Book 54 pages 88 and 89 of Maps, and Lots 1 and 3 in Block 38 of said Tract as per map recorded in Book 54 pages 88 and 89 of Maps. [135]

Excepting all water in or under said land.

- (J) Lots 4, 8, 26, 28, 31, 32, 34 and 35 in Block 39: Lots 1, 23, 27, 28, 29 and 32. except the Westerly 5 feet of Lot 32, in Block 40;

Lots 1, 2, 3, 4, 8, 9, 12, 13, 14, 16, 21, 22, 25, 31, 33 and 37 in Block 41;

Lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 18, 19, 21 and 22 in Block 42; and

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, 19, 20 and 21 in Block 43. of said Tract, as per map recorded in Book 84 pages 99 and 100 of Maps, records of said County.

Excepting all waters in or under said land.

Excepting Also from Lots 1 and 2 in Block 41;

Lots 3, 4, 6, 7, 8, 18, 19, 21 and 22 in Block 42; and

Lots 16, 17, 19, 20 and 21, in Block 43 the 150 foot strip of land conveyed to Southern California Edison Company, by deed recorded in Book 4602 page 238 of Official Records.

- XV. That portion of the 3365.95 acre allotment of Maria Delores Domingues de Watson in the Rancho San Pedro, in the City of Los Angeles, said County and State, described as follows:

Beginning at the intersection of the Northerly line of Grant Avenue (formerly Watson Alley) with the Northerly prolongation of the West line of Block 10 Domingues Harbor Tract, as per map



recorded in Book 12 pages 14 and 15 of Maps; thence Southerly along the prolongation and West line of said Block 10 to the North line of the 50 foot right of way of the Southern Pacific Railroad; thence Northwesterly along said North line to the West prolongation of said North line of Grant Avenue; thence Easterly along said prolongation to the point of beginning;

Except that portion thereof, if any, included in drainage channel of Nigger Slough.

Note: Said property is a triangular parcel at Northeast corner of Tract No. 2016 and is a part of Lot 6 of said allotment. (For property in Tract No. 2016 see paragraph IV page 4-b hereof.) [136]

Group or Parcel 2:      —      Acreage Property

I-a Tract No. 250, in the County of Los Angeles, State of California, as per map recorded in Book 15 pages 130 and 131 of Maps, records of said County:

- A. Lots 179-1/2 and 180-1/2;
- B. Lot 181-1/2, and  
that portion of Laurita Place vacated, adjacent to Lot 181-1/2;
- C. Lots 184, 185, 186, 188, 189, 190 and 192;
- D. South half of Colina Drive vacated, adjacent to Lots 190 and 192;
- E. Lot 191 and South and Westerly one-half of the vacated portion of Colina Drive adjacent, except those portions thereof included within the lines of the following described parcel:

Beginning at the Northwest corner of Lot 13 of said Tract; thence along the prolongation of the North line of said Lot 13, South  $88^{\circ} 36'$  West 52.98 feet; thence South  $39^{\circ} 07'$  East 64.08 feet to the beginning of a curve concave to the Southwest having a radius of 285.47 feet; thence Southeasterly along said curve 49.49 feet to an angle point in the Westerly line of said Lot 13 distant North  $29^{\circ} 11'$  West 54.21 feet from the Southwest corner of said Lot 13; thence Northerly along the Westerly line of said Lot 13, 93.79 feet to the point of beginning.

F. Lots 193, 194, 195, 205 and

G. Lot 204 of said Tract in the City of Glendale. Except that portion described as follows:

Beginning at a point in the Northerly line of said Lot 204, 130 feet East from the Northwest corner of said Lot 204, thence South parallel with the Westerly line of said Lot 204, 180 feet; thence East parallel with the Northerly line of said Lot 204 to the Southeasterly line of said Lot; thence Northeasterly along the Southeasterly line of said Lot 204 to the Northeast corner thereof; thence Westerly along the Southerly line of Colina Drive (the Northerly line of Lot 204) to the point of beginning.

Excepting From All of Said Land in Said Tract No. 250 All Water on and Underneath the Same.

II-a Tract No. 1000, in the City of Los Angeles, said County and State, as per map recorded in Book 19 pages 1 to 34 inclusive, of Maps, records of said County:

Lots 2, 23 and 24; [137]



Excepting the water in and upon said land as owned by the City of Los Angeles;  
Also Excepting all mineral, coal, oils, petroleum and kindred substances and natural gas under and in said land.

III-a Tract No. 1335, in the City of Los Angeles, said County and State, as per map recorded in Book 18 page 131 of Maps, records of said County:

Lots 1 and 2;

Excepting the water in and upon said land as owned by the City of Los Angeles;

Also Excepting all mineral, coal, oils, petroleum and kindred substances and natural gas under and in said land.

IV-a Tract No. 1336, in the City of Los Angeles, said County and State, as per map recorded in Book 18 pages 146 and 147 of Maps, records of said County:

Lots 4, 5, 6 and 7;

Excepting the water in and upon said land as owned by the City of Los Angeles;

Also Excepting all mineral, coal, oils, petroleum and kindred substances and natural gas under and in said land.

V-a Rancho Los Cerritos, in the City of Long Beach, said County and State, as per map recorded in Book 4 page 406 et seq. of M.R. of said County:

(A) The West 18 acres of the East 33 acres of Lot 20 of the 1419.09 acre Tract of said Rancho; Excepting that portion thereof conveyed to the Edison Securities Company by deed recorded in

Book 6548 page 184 and described as lying West of the following described line:

Beginning at a point in the center line of Willow Street as now established, along North line of Lot 18 of said 1419.09 acre Tract, distant North  $89^{\circ} 40' 15''$  East 116.96 feet measured along said center line from the compromise boundary line between Rancho Los Cerritos and Rancho San Pedro as said line is re-located and shown in Book 13 page 25 Records of Survey; thence from said point of beginning South  $0^{\circ} 14' 29''$  East 120 feet; thence South  $16^{\circ} 39' 10''$  West 4440.70 feet, more or less, to a point in said compromise line South  $6^{\circ} 00'$  West 1679.07 feet from Station 49 in said compromise line, as shown on said Records of Survey;

Also Excepting the South 20 feet thereof, reserved for public road. [138]

- (B) That part of Lot 20 of said 1419.09 acre Tract of said Rancho, in said County and State, described as follows:

Beginning at a point in the South line of said Lot, 20 rods West of the Southeast corner thereof, said point being in the center line of Hill Street; thence West 10 rods; thence North at right angles 80 rods; thence East at right angles 10 rods; thence South at right angles 80 rods to the place of beginning;

Except the South 20 feet of said premises included in public road; all as per map recorded in Book 4 page 406 et seq. Miscellaneous Records of said County.

(C) Those portions of Lots 30 and 31 of the 1419.09 acre Tract, commonly known as "Wilmington Colony Tract", of said Rancho, in the City of Long Beach, said County and State, described as follows:

(a) The Westerly half of the Northerly three-fourths of Lot 30;

Except the Northerly 20 feet reserved for public road.

Excepting the Easterly 30 feet thereof, known as Seabright Street.

(b) All of said Lot 31;

Except the Southerly 10 acres thereof.

Also Excepting that portion described as follows:

Commencing at the Northwest corner of said Lot 31, running thence East 5.26 chains in the middle of the San Gabriel River; thence South  $10^{\circ} 14'$  West 4.23 chains; thence South  $29^{\circ} 13'$  West 3.38 chains; thence South  $18^{\circ} 5'$  West 4.25 chains; thence South  $4^{\circ} 36'$  West 3.90 chains; thence West 1.17 chains; thence North 15 chains to the point of beginning containing about  $4\frac{1}{2}$  acres as conveyed to A. L. Park and S. H. Wheeler by deed recorded in Book 536 page 276 of Deeds; and

Also Excepting the Northerly 20 feet thereof reserved for public road.

VI-a Verdugo Estate, in said County and State, as per map recorded in Book 12 pages 34 and 35 of Maps, records of said County:

Lot 3;

Except those portions described as follows:

Beginning at a point in the Northerly boundary line of said Lot 3 of the Verdugo Estate, which point is distant South  $88^{\circ} 37'$  West 43.54 feet along said Northerly boundary from the Easterly terminus of that certain course in said Northerly boundary line shown on said above mentioned map as having a bearing of North  $88^{\circ} 37'$  East and a length of 19.185 chains; thence from said point of beginning, North  $88^{\circ} 37'$  East 43.54 feet along the Northerly boundary line of said Lot 3 to an angle point; thence South  $62^{\circ} 15'$  East 877.50 feet along the Northeasterly boundary line of said Lot to the most Easterly corner of said Lot 3; thence along the Easterly boundary line of said lot the following five courses and distances: South  $30^{\circ} 54' 20''$  West 427.9 feet; South  $6^{\circ} 3' 40''$  West 901.96 feet; South  $56^{\circ} 32' 25''$  West 200.49 feet; South  $0^{\circ} 57' 50''$  West 264.60 feet, and South  $29^{\circ} 24'$  West 135.36 feet; thence North  $0^{\circ} 02' 55''$  West 2023.95 feet, more or less, to the point of beginning.

Also Excepting a strip of land 150 feet in width across said Lot 3 as conveyed to Southern California Edison Company, by deed recorded in Book 4602 page 238, Official Records. [139]

VII-a      Selvas de Verdugo, in the City of Glendale, said County and State, as per map recorded in Book 37 pages 77 to 83 inclusive, of Maps, records of said County:

(A) Lot 1 in Block 23;

Except that portion thereof described as follows:

All that portion of said Lot 1 included within the lines of Lot 108 of Tract No. 250 as per map recorded in Book 15 pages 130 and 131 of said Map records.

Excepting all waters in or under said land.

- (B) Also that portion of Bonita Drive, as shown of said map of Tract No. 250, now vacated, described as follows:

Beginning at the intersection of the Easterly line of said Lot 108 of Tract 250 with the Westerly line of Hermosita Drive, as shown on map of Selvas de Verdugo Tract; thence Northerly along the Easterly line of said Lot 108 to the intersection of said Easterly line with the Southerly line of Lot 2 in Block 23 of said Selvas de Verdugo Tract; thence Easterly along the Southerly line of said Lot 2 to a point in the Westerly line of said Hermosita Drive; thence Southerly along said Westerly line of Hermosita Drive, being also the Easterly line of said Lot 1 to the point of beginning.

Excepting all waters in or under said land.

- (C) Selvas de Verdugo, in said City, County and State; as per map recorded in Book 37 pages 77 to 83 inclusive of Maps, records of said County: Block 22;

Except that portion deeded to the City of Glendale for street purposes to be known as Hillside Drive by deed recorded in Book 5637 page 320, Official Records.

Excepting all waters in or under said land.

- (D) Selvas de Verdugo, in said City, County and State, as per map recorded in Book 37 pages 77

to 83 inclusive of Maps, records of said County:  
Block 24;

Excepting all waters in or under said land.

VIII-a Teodora and Catalina Verdugo Allotment of Rancho San Rafael, in said County and State, as per map recorded in Book 75 pages 61 and 62 of Maps;

2.20 acres, being a portion of 47.95 acres of said allotment, described as follows:

Commencing at the intersection of the East line of Verdugo Road with the North line of said 47.95 acre tract; thence South on said East line of Verdugo Road to South line of said Tract; thence North  $85^{\circ} 37'$  East 144.75 feet; thence North  $37^{\circ} 40'$  East 4.30 chains; thence North  $21^{\circ} 29'$  East 1.81 chains; thence North  $82^{\circ} 15'$  West to point of beginning. [140]

IX. . Rancho San Rafael, in the City of Glendale, said County and State;

That portion of 2629.01 acre tract allotted to Teodora and Maria Catalina Verdugo by decree in partition in Case 1621., District Court in said County, entitled A. B. Chapman et al vs. Fernando Sepulveda, described as follows:

Beginning at a stake in the Westerly line of said allotment, 100.64 chains South from Station 22 of the exterior line of said allotment being the Southwest corner of the 132.07 acre tract of land formerly owned by Marie le Mesnager; thence South  $85^{\circ} 41' 53.10$  chains; thence North  $9'' 48'$  East 16.50 chains; thence North  $85^{\circ} 37'$  East 4.84 chains; thence North  $41^{\circ} 51'$  East 4.10 chains; thence North  $21^{\circ} 29'$  East 1.81 chains;



thence North  $82^{\circ} 15'$  West 6 chains 50 links to a point North  $10^{\circ} 38'$  East 6.42 chains from the North end of the second call on this description, to-wit: Being the call "North  $9^{\circ} 48'$  East 16.50 chains, thence South  $59^{\circ} 30'$  West 1.75 chains; thence South  $10^{\circ} 33'$  West 6.40 chains"; thence Southwesterly in a straight line to the Southwest corner of said 132.07 acre tract, to the point of beginning.

Except that portion of the above described land lying between Hermosita Drive, as shown on the map of Selvas de Verdugo, Sheets 11 and 12, recorded in Book 54 pages 88 and 89 of Maps, in the office of the County Recorder of said County, and Verdugo Canon Road, as said Road is now located and shown on the map of Selvas de Verdugo, Sheets 13 and 14, recorded in Book 84 pages 99 and 100 of said Map Records.

Excepting Also 2.20 acres, being a portion of 47.95 acre tract, being a portion of Teodora and Catalina Verdugo allotment of Rancho San Rafael as per map of record in Miscellaneous Records, Book 75 pages 61 and 62 of Maps, in the office of the Los Angeles County Recorder, commencing at the intersection of the East line of Verdugo Road with the North line of said 47.95 acre tract, thence South on said East line of Verdugo Road to the South line of said tract, thence North  $85^{\circ} 37'$  East 144.75 feet, thence North  $37^{\circ} 40'$  East 4.30 chains, thence North  $21^{\circ} 29'$  East 1.81 chains, thence North  $82^{\circ} 15'$  West to point of beginning.

Excepting all water in or under said land. [141]

Group or Parcel 3:

Whereas, by assignment of mortgage executed by F. P. Newport Corporation, Ltd., said corporation assigned, transferred and set over, with power of sale, unto the Security-First National Bank of Los Angeles that certain mortgage dated May 25th, 1928, made and executed by T. L. Dudley, Mortgagor, in favor of F. P. Newport, Mortgagee, and recorded on the 29th day of May, 1928, in Book 8607, page 103 of Official Records, in the office of the County Recorder of Los Angeles County, State of California, together with the note described in said mortgage dated May 25th, 1928, due May 25th, 1931 for Thirty-nine Thousand Three Hundred Seventy-five Dollars (\$39,375.00), and moneys due or to grow due thereon with interest; a verbatim copy of said note is attached hereto, made a part hereof and marked "Exhibit A"; the property covered by said mortgage is described as follows:

Those portions of the Rancho Los Cerritos, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 4 page 406 et seq. of Miscellaneous Records, described as follows:

Parcel 1: Beginning at the most Southwesterly corner of the land described in the deed to the Title Insurance and Trust Company, recorded in Book 5577 page 105 of Deeds, Records of said County, in the Northwesterly line of Channel #3, Long Beach Harbor; thence along said Northwesterly line South  $64^{\circ} 42' 30''$  West 250 feet; thence North  $19^{\circ} 42' 30''$  East 738.08 feet; thence North  $64^{\circ} 42' 30''$  East 250 feet to the most Northwesterly corner of the land described in said deed to the Title Insurance and



Trust Company; thence along the Northwesterly line of said land so described, South 19° 42' 30" West 738.08 feet to the point of beginning.

Parcel 2: Beginning at the most Southeasterly corner of the land described in the above mentioned deed to the Title Insurance and Trust Company, in the Northwesterly line of Channel #3 of Long Beach Harbor; thence along the Southeasterly line of the land described in said deed North 19° 42' 30" East 738.08 feet; thence North 64° 42' 30" East 500 feet; thence South 19° 42' 30" West 738.08 feet to a point in said Northwesterly line of Channel #3; thence along said Northwesterly line South 64° 42' 30" West 500 feet to the point of beginning. [142]

Note 1: The above property described in said Parcels 1 and 2 is designated as Lots 18, 20 and 21 on the map made by the City Engineer of the City of Long Beach for local assessment purposes, recorded in Book 1 page 10 of the County Recorder's Assessment Maps, recorded February 9th, 1917.

Note 2: The above property described in said Parcels 1 and 2 is also commonly referred to as "Harbor Frontage Property".

Group or Parcel 4:

Whereas, by assignment of beneficial interest executed by F. P. Newport Corporation, Ltd., said corporation assigned, transferred and set over, with power of sale, unto said Security-First National Bank of Los Angeles its entire beneficial interest (being 57/80ths interest) in and to a Trust evidenced by that certain Declaration of

Trust No. P-1512 issued by the Title Guarantee and Trust Company, a corporation, together with a like interest in and to the proceeds and avails arising or growing out of said transfer or assignment, subject, however, to all of the terms and conditions of said Trust and to all instruments amending or supplementing said Declaration of Trust; a verbatim copy of said beneficial interest is attached hereto, made a part hereof and marked "Exhibit B"—(a copy of said Declaration of Trust being on file with the Trustee hereunder).

Note: The real property covered by said Declaration of Trust is the same property as covered by the above mortgage.

The title to the property described in Groups or Parcels 1 and 2 hereof as shown by the Policy and/or Policies of Title Insurance issued by the Title Insurance and Trust Company under its No. 1178917, to be hereafter procured, shall be vested in the Security First National Bank of Los Angeles, a national banking association, free from all incumbrances except bonds for the improvements of the streets, taxes, and conditions, restrictions and rights of way of record as set out in said Policy and/or Policies, a copy [143] of each Policy shall be hereafter attached hereto, made a part hereof and marked "Exhibit C"; and

The title to the real property covered by the Mortgage and Declaration of Trust referred to at Group and/or Parcel 3 and Group and/or Parcel 4 hereof, as shown by Policy of Title Insurance issued by said Title Company under the above number shall be vested in the Title Guarantee and Trust Company, a corporation, subject to the incumbrances as waived and excepted by the Beneficiary and the Trustee hereunder, and particularly re-

ferred to in said Policy, a copy of which shall be hereafter attached hereto, made a part hereof and marked "Exhibit C-I". [144]

Whereas, the Trustee paid no consideration for the conveyances of said real property, the assignment of said note, mortgage and beneficial interest in said Declaration of Trust, and while said conveyances to the Trustee were in form and by their terms absolute, yet, nevertheless, they were intended to be and were received by the said Trustee herein, in trust, with power of sale, primarily as security for the payment of the note herein set out now owing from the said Beneficiary to the said Payee, together with all interest that may be due or that may accrue on said note or notes, together with any renewal or renewals of said note, and also as security for the payment of any additional sums, with interest thereon, that may be hereafter borrowed and received by the said Beneficiary from the said Payee and evidenced by another promissory note or notes executed and delivered therefor by the said Beneficiary to the said Payee, together with any renewal or renewals of said note or notes and also as security for any sums of money, with interest thereon, that may be expended either by the Trustee or the Payee herein as hereinafter provided, and the conveyances of said real property were further received for the purpose of subdividing, renting, leasing, selling and conveying said property in accordance with the terms and conditions hereinafter set forth; and

Whereas, the Beneficiary shall have the right to make additions of property, or rights of any kind or character, to the corpus of this Trust, at any time, and such additions thereto, when so made, shall ipso facto be impressed with all of the indebtedness secured hereby, and said Trustee

shall have the same power and authority respecting the same as if the same had originally constituted a portion of the corpus of this Trust. Conditioned, However, that said Trustee reserves the right to refuse to accept as a part of the corpus of this Trust, any such additions, and reserves the further right when and if such additions thereto are made, to require amendments of the Declaration of Trust herein as it may deem convenient and/or necessary for the management and administration of this Trust.

Now, Therefore, This Declaration of Trust.

Witnesseseth:

That the Security-First National Bank of Los Angeles as Trustee does hereby certify and declare that it holds and shall hold all interest in the property, both real and personal, conveyed to it through said conveyances in trust, and all other property that may hereafter be conveyed to it as hereinbefore provided, with power of sale, for the purpose of securing the payment of the above described note and the payment of any indebtedness secured hereby; and also for the purpose of collecting and/or enforcing the payment of both the principal and the interest on the mortgage note referred to in Group or Parcel 3 of the property covered hereby; and for the purpose of collecting the proceeds and avails of the Trust referred to in Group or Parcel 4, and also for the purpose of subdividing, renting, leasing, selling and conveying the property referred to in Groups or Parcels 1 and 2 and applying and disposing of the proceeds and avails arising therefrom in accordance with the terms and conditions herein expressed, to-wit:

[146]

Article First: During the continuance of these trusts the Beneficiary agrees as follows:

(a) To pay before delinquency, all taxes, assessments and the installments of principal and interest on any street bonds upon said property and any tax upon any note secured hereby;

(b) To pay the principal and interest of any note secured hereby in favor of the Payee hereunder, as and when due;

(c) To pay when due, all other claims, liens and encumbrances affecting, or purporting to affect, the title to said property, and all costs, charges, interest and penalties on account thereof, and also all costs, fees, charges and expenses of the Trustee and of these trusts as herein provided;

(d) To appear and defend in any action or proceeding at law affecting, or purporting to affect, said property, these trusts, or the rights of either the Trustee or the Payee hereunder; and said Beneficiary hereby agrees to pay all costs and expenses of any such action or proceedings, together with the attorney's fees in a reasonable sum to be fixed by the Court, whether any such action or proceeding progress to judgment or not, and whether brought by or against the Trustee or the Payee;

(e) To protect, preserve and defend said property and the title thereto, and to keep said property in good condition and repair, and to permit no waste or deterioration thereof; and

(f) To pay for all improvements contracted for or ordered by the said Beneficiary or its duly authorized Agent.



Said Beneficiary, by its ratification of this Declaration of Trust, promises and agrees to file with the [147] Trustee a copy of each contract let for said improvements, and also a Surety Bond satisfactory to the Trustee for the amount of the improvements as called for in each contract, guaranteeing the installation of said improvements and indemnifying said Trustee and said property against all costs, charges and/or liens imposed upon said property by reason of any improvements placed thereon.

In the event that said Beneficiary fails to so file with the Trustee a bond satisfactory to said Trustee, then and in that event said Trustee will, upon the written instructions of the Payee hereunder, post notices of non-responsibility upon the Trust property and record the same in such manner as will comply with Section 1192 of the Code of Civil Procedure of the State of California, protecting said Trustee and said property against any liens imposed upon said property by reason of the improvements made thereon.

It is understood and agreed that until said Bond shall have been filed with the Trustee said Trustee shall not be required to issue and deed or contract to any lot in the subdivision of the Trust property.

Should the Beneficiary fail or refuse to make any of the payments or to do any of the acts hereinabove mentioned, then the Trustee and/or the Payee, or either of them, may without notice to the Beneficiary, make or do the same in such manner and to such extent as they, or either of them, may elect, and may pay, purchase, contest or compromise any claims, liens or incumbrances which in their judgment appear to affect said property or these trusts, but neither the Trustee nor the Payee shall be obligated to do any of the things above [148] mentioned. Said Beneficiary agrees to repay within thirty (30) days



from the date of advancement, and without demand, all sums advanced or expended by the Trustee or the Payee under the terms hereof, with interest thereon from the date of advancement until repaid, at the rate fixed in said note hereinbefore referred to, and if not so repaid, and/or upon failure of said Beneficiary to perform any and all of the acts agreed to be kept and performed, such act shall constitute a default hereunder and subject the Beneficiary to a sale of its rights hereunder as provided in Article Second herein.

Article Second: Should the Beneficiary default in payment when due of any sum payable on any indebtedness owing to said Security-First National Bank of Los Angeles, or should the Beneficiary default in the prompt performance of any covenant, agreement or undertaking hereof and should such default continue for a period of sixty (60) days after notice thereof in writing has been mailed to the party or parties in default, by registered mail addressed to their last address, on file with the Trustee, the Trustee in addition to any other remedies given it by law or hereunder, may at its option to satisfy in the order of priority herein provided, any and all obligations secured hereby, proceed to foreclose and sell the beneficial right, title and interest of the Beneficiary and of all persons claiming under or through it, in and under this Trust and/or in and to the property included in this Trust, in one or more of the following methods, the Trustee being granted absolute discretion to determine which of said methods it shall follow:

(1) At its election it may sell such beneficial right, title and interest, if any, in and under this Trust at [149] public auction as personal property under pledge in accordance with Sections 3000 to 3011 of the Civil Code of

California and not in accordance with Section 2924 of said Civil Code, or it may make such sale without the demand of performance and notice of sale provided for by Sections 3001 and 3002, respectively, of said Code, said Beneficiary for itself and its successors in interest hereby expressly waiving such statutory demand and notice and the benefits and provisions of each and all of Sections 3000 to 3011 inclusive, and 2924 of the Civil Code of California, in accordance with Section 3268 thereof. To enable the Trustee fully to consummate any such sale and to transfer, assign and deliver the interests of the Beneficiary hereunder to any purchaser upon the sale thereof, the Beneficiary does hereby convey, transfer, assign and deliver to said Trustee all its interests and title in fee to its said beneficial interests under this Trust and in and to the Trust estate, if any, for the purpose of such sale; or

(2) At the Trustee's election it may sell such right, title and interest, if any, of the Beneficiary, or its successors in interest in and under this Trust and/or in and to the property then comprising the Trust estate, after having recorded the Notice of Default provided by Section 2924 of the Civil Code of California, or without such notice and recordation as the Trustee may elect, the provisions and benefits of that Section being also hereby waived by the Beneficiary, and by it for its successors in interest, in accordance with Section 3268 of said Civil Code. Such sale of any right, title or interest in or to the property comprising the Trust estate shall be made only in the manner required by law for the sale of real property under execution; or [150]

(3) At the Trustee's election it may sell, dispose of, or in any manner which it may deem expedient, proceed against and foreclose in any manner permitted by law,

the entire interest of the Beneficiary and those claiming under it in and under this Trust and/or in and to the entire Trust estate then subject to this Trust.

Any sale made in any of the foregoing manners may be postponed by the Trustee from time to time by publication prior to the date originally set, of a notice of postponement in the same newspaper or newspapers in which the original notice of sale was published, if any, or by public announcement thereof at the time and place of sale so advertised or noticed or to which said sale may be postponed.

At the time and place fixed for any sale as above provided the Trustee may sell the entire beneficial right, title and interest of the Beneficiary, or its successors in interest, in and to this Trust and/or in and to the property then included in it to the highest bidder for lawful money of the United States, and upon such sale and payment made it shall execute and deliver to the purchaser or purchasers a transfer and assignment or conveyance evidencing such purchase, whereupon such purchaser shall succeed to the entire right, title and interest of the person or persons whose interest is sold in and under this Trust and/or to their right, title and interest in and to the property then comprising the trust estate as the case may be.

The recitals in any such transfer and assignment or any such conveyance, of facts affecting the regularity and validity of such sale shall be conclusive proof of the truthfulness of such recitals, and such transfer [151] and assignment or conveyance shall be conclusive as to the legality and regularity of all proceedings leading up and prior thereto.

At any such sale either the Trustee, the Payee, the Beneficiary, or any other person may become the purchaser.

The Trustee shall apply the proceeds received by it from any such sale or sales made hereunder to the payment of the amounts and items in the order of priority as follows:

(a) Expenses of sale, including posting and advertising, together with the unpaid costs, fees, charges and expenses of this Trust, and in addition thereto the Trustee's fees for making said sale, which are hereby fixed at the sum of Four Hundred Dollars (\$400.00), plus Fifty Dollars (\$50.00) for each Five Thousand Dollars (\$5,000.00) or fraction thereof that the total amount then unpaid and secured hereby exceeds Fifteen Thousand Dollars (\$15,000.00);

(b) All sums which may have been theretofore paid, loaned or advanced by the Trustee in accordance with the provisions hereof or in the course of its administration and for the benefit of this Trust and not then repaid, including the compensation of the Trustee, other than compensation for making such sale, and any and all other costs and expenses of the Trust with accrued interest, if any, in each case;

(c) The amount due and unpaid on all indebtedness secured hereby, in the priority in which such indebtedness is so secured, as herein provided, with whatever interest that may have accrued thereon, and if the balance of such proceeds is not sufficient to pay said indebtedness in full, pro rata credit shall be given on each note, only for the amount so realized from said sale, and shall in no manner be considered a discharge of such indebtedness, or prevent a recovery thereon of any unpaid balance; and

(d) The balance of said proceeds, if any, to the person or persons legally entitled thereto:

or

(4) Should a breach or default be made in the payment of any note or notes or other obligations for which this Declaration of Trust is a security, and such default or defaults shall continue for a period of thirty (30) days after the time therein mentioned for payment, then the holder or holders of such note or notes, or indebtedness mentioned as [152] secured hereby, may declare all sums secured hereby immediately due and payable, and shall execute and deliver to the Trustee a written Declaration of Default hereunder and demand for sale, and shall thereafter record, in the office of the Recorder of the County wherein said property or some part thereof is situated a notice of such breach or default and of its election to cause the property then comprising the Trust Estate, to be sold to satisfy said obligations.

In any such sale the Trust Estate to be sold shall be the following:

I. All the real property subject to this Declaration of Trust, except:

(a) The real property which has been deeded by the Trustee pursuant to the provisions of this Trust;

(b) Real property which the Trustee has contracted to sell under the provisions of this Trust pursuant to agreements of sale which are then existing and outstanding; and

(c) Property, if any, hereafter subjected to this Declaration of Trust and subject to sale under contracts executed prior to the time such property was subjected to this Trust Agreement which are then existing and outstanding.

II. All right, title and interest of the Beneficiary of this Trust in and to each and all contracts and/or agree-



ments of sale belonging to this Trust and which are then existing and outstanding. The right, title and interest of the Beneficiary of this Trust in and to said contracts, and each thereof, shall include the following: [153]

(a) All right, title and interest of the Beneficiary of this Trust in and to the real property covered by said contracts, including all reversionary rights to said property;

(b) All the rights and benefits of the Beneficiary of this Trust pursuant to and to the extent of the interest of the Beneficiary in said agreements of sale, including the right to enforce the trusts created hereunder; and

(c) The right to all moneys thereafter collected by the Trustee upon said contracts then outstanding and existing, less subsequent fees and advances of the Trustee, and commissions, if any, due or to become due to sales agents.

III. The right to obtain from the Trustee holding title to the property covered by any of said contracts a full conveyance of the title to such property in the event of the forfeiture, termination and cancellation of such contract.

IV. All notes, together with the mortgages or deeds of trust securing such notes, and other securities which the Trustee shall have received by virtue of these presents.

After three (3) months shall have elapsed following said recordation of said notice, the Trustee, without demand on the Beneficiary or any other person, shall sell said property at such time and place, and shall sell the real property so to be sold in such parcels, as it shall deem best to accomplish the objects of these Trusts, having first given notice of the time and place of such sale or sales in the manner and for a time not less than that



required by law for sales of real property upon execution, and by posting a copy of such notice in some conspicuous place on the property to be sold [154] at least twenty (20) days before the date of sale.

The Trustee may postpone sale of all, or any portion of said property by public announcement at the time fixed by said notice of sale, and may thereafter postpone said sale from time to time by public announcement at the time fixed by the preceding postponement; and without further notice it may make such sale at the time to which the same shall be so postponed, provided, however, that the sale or any postponement thereof must be made at the place fixed by the original notice of sale, and provided that the sale held pursuant to such postponement or postponements shall be held within twelve months from the date originally set for such sale.

Such sale or sales shall be made in the following manner, namely:

At the time and place of sale fixed as hereinbefore provided, the Trustee may sell the property so advertised, or any portion thereof, either en masse, or the real property to be sold in separate parcels, or the right, title and interest of the Beneficiary in one or more of said agreements of sale separately, or any part of said securities separately, at its sole discretion, at public auction, to the highest bidder for cash in Lawful Money of the United States, all payable at time of sale, and, after any such sale and due payment made, shall execute and deliver to the purchaser or purchasers a deed or deeds, and/or other instruments of transfer, conveying the property so sold to such purchaser or purchasers, and shall assign the right, title and interest of the Beneficiary so sold in and to said agreements of sale, retaining the title to the real property covered by such agreements of sale for the bene-

fit of the purchaser at the sale, and shall assign [155] any securities so sold to the purchaser thereof. Said sale, and the deeds, assignments or other instruments evidencing the same, shall be without covenant or warranty, express or implied, regarding the title, possession or encumbrances.

The right, title and interest of the Beneficiary, which shall be so sold, in and to said agreements of sale, shall include all the right, title and interest of the Beneficiary in and to the real property covered by such agreements of sale, all the rights and benefits of the Beneficiary under this Trust pursuant to and to the extent of the interest of the Beneficiary in said agreements of sale (including the right to all moneys collected by the Trustee after said sale upon said agreements of sale, less unpaid commissions due the Agent and the advances, fees, costs and expenses of the Trustee), and the right of the purchaser at the sale to obtain from the Trustee a conveyance of the title to the property covered by such of said agreements of sale as shall be forfeited, terminated or cancelled. The purchaser or purchasers of the real property sold shall be let without demand into immediate possession of said property, and all other persons in possession thereof shall be deemed to be tenants at sufferance.

The recitals in any such deed, assignment or other instrument, of any facts or matters affecting the regularity or validity of such sale shall be conclusive proof of the truthfulness of such recitals, and shall be conclusive against all persons as to all matters recited therein. The Trustee, or the Payee, or any person on behalf of either, or any other person, may purchase at such sale.

In the event that the part of the Trust estate described in Subdivision II of this sub-article (4) is not sold [156] in one parcel as an entirety but is sold in several parcels

to more than one purchaser, each of the purchasers respectively at such sale shall acquire all of the rights enumerated in Subdivision II of this Article, only insofar as said rights apply to or arise out of the respective contracts, the right, title and interest to which such purchaser shall have purchased.

It is specifically understood and agreed that from and after any such sale the Trustee shall retain the legal title which such Trustee holds to all the real property covered by contracts of sale of land which the Trustee has entered into, and contracts of sale affecting property hereafter subjected to the terms of this trust agreement which are then outstanding and existing, so as to enable the Trustee hereunder to carry out all of such contracts and to administer the trusts and perform the duties in relation to such contracts as set out in this Declaration of Trust.

After such sale whenever payment in full of any said contracts for the sale of the land shall have been made by the contract holders and such contract fully complied with according to its terms, said Trustee shall convey such land to such contract holder or to the person entitled thereto and to that end shall execute a deed or conveyance in such form as may be called for in such contract and deliver the same to such contract holder or the person entitled thereto without any liability, except for the accounting of the moneys collected on such contract.

In the event the terms of any said contracts for sale of the land are not complied with the Trustee shall continue to hold title to such lot or lots until all rights of the contract holder, or assignee thereof, have been forfeited, terminated and cancelled, and said Trustee fully released from [157] all liability under such contract in a manner satisfactory to said Trustee. Upon such forfeiture,

termination and cancellation said Trustee shall hold for the benefit of, or convey title to such lot or lots to the purchaser or purchasers of the Trust estate according to the election of such purchaser, subject to the payment of reasonable fees of the Trustee.

The Trustee shall apply the proceeds received by it from any such sale or sale \_ made hereunder to the payment of the amounts and items in the order or priority as follows:

1st: The expenses of such sale (including cost of search or evidence of title), together with all costs, fees, charges and expenses of the Trustee and of these trusts, including Trustee's fees in connection with such sale whether completed or not, which said amounts are hereby fixed at the sum of Four Hundred Dollars (\$400.00), plus Fifty Dollars (\$50.00) for each Five Thousand Dollars (\$5,000.00) or fraction thereof that the total amount then unpaid and secured hereby exceeds Fifteen Thousand Dollars (\$15,000.00);

2nd: All sums due and unpaid to the Trustee, and all sums which may have been paid under or in accordance with the provisions of this Declaration of Trust by the said Trustee or the said Payee, and not repaid, whether paid on account of taxes, assessments, liens or in the performance of the trusts herein created, together with whatever interest that may have accrued thereon;

3rd: The amount due and unpaid on all indebtedness secured hereby, in the priority in which such indebtedness is so secured, as herein provided, with whatever interest that may have accrued thereon, and if the balance of such proceeds is not sufficient to pay

said indebtedness in full, pro rata credit shall be given on each note, only for the amount so realized from said sale, and shall in no manner be considered a discharge of such indebtedness, or prevent a recovery thereon of any unpaid balance; and

4th: The balance of said proceeds, if any, to the person or persons legally entitled thereto.

Article Third: The Trustee shall, subject to the approval of the Payee and the Beneficiary, divide and subdivide said acreage in such tracts, lots or parcels as [158] the Beneficiary may determine and shall have the power to and shall at the Beneficiary's request execute the necessary map or maps of such subdivision from time to time, and in that connection the Trustee is authorized to and shall dedicate and grant to public use any and all roads, streets and alleys shown on such map or maps and is authorized to and shall convey and grant any and all easements and any and all rights of way which may be required or desirable for the transmission of water, gas, electricity or other purposes which may be considered by the Beneficiary to be necessary, desirable or proper for the subdivision and sale of said premises, in whole or in part, or for the best advantages of this Trust or any person who may be interested in it, but all at the cost and expense of the Beneficiary hereunder.

The Trustee shall, subject to the approval of the Payee and the Beneficiary, also have the power to grant to public use or to public or quasi public bodies or corporations, or to private persons, portions of the property for parks, public buildings, schools or other public or quasi public purposes, or to sell one or more lots or parcels at less than the schedule of minimum sales prices hereinafter mentioned, whenever and as often as such course may seem desirable to the said Trustee, Payee and Beneficiary.



Article Fourth: The Beneficiary shall file with the Trustee a schedule of minimum sales prices which shall, when agreed upon by the Trustee and Payee become a part hereof, as fully as though attached hereto at the time of the execution of this Declaration, and said Beneficiary shall from time to time if, when and as portions of acreage are subdivided file with the Trustee a schedule of minimum [159] sales prices of each lot in each such subdivision, which shall, when agreed upon by the Trustee and the Payee become a part hereof.

Except as otherwise expressly herein provided, no lot or parcel shall be sold at any time prior to the payment in full of all indebtedness to the Payee secured hereby at a price less than the minimum sales price set forth in said schedule.

The Payee has fixed a release price for each lot or parcel of the Trust property, except said Group or Parcel 3, which schedule of release prices is attached hereto and marked "Exhibit D". The Payee further agrees, upon the request of the Beneficiary, to fix release prices on the lots of any future subdivision or re-subdivision of the Trust property by allocating an amount satisfactory to it of the releases theretofore fixed for the parcel so re-subdivided and the release prices of the lots as subdivided when agreed upon by the Trustee and the Payee shall be deemed thereupon to become a part hereof for the purposes herein stated as though attached hereto at the time of the execution of this Declaration.

Article Fifth: The Trustee shall rent, lease, sell or convey said property, or any portion thereof, to such person or persons, at such prices and upon such terms and conditions as the Beneficiary hereunder may direct in writing, or upon the written instructions of the duly au-



thorized Agent of the said Beneficiary, subject, however, to the terms of this indenture, and, in the case of leases and rentals, subject to the approval of the Trustee.

Such sales may be made for cash, in which event a discount of five (5) per cent from said minimum sales price may be allowed upon the written request of the Beneficiary, or such [160] sales may be made upon credit evidenced by a written contract of sale in such form and upon such terms as the Trustee and the Beneficiary may determine; or the Trustee shall upon the direction of the Beneficiary when as much as thirty-five per cent (35%) has been paid on the purchase price of any lot execute a deed to the purchaser for said lot upon receiving the purchaser's note for the balance of the purchase price secured by a trust deed constituting a first lien on such lot, and in case of default the Trustee shall have full power to foreclose any such deeds of trust.

Likewise at any time upon the written request of the Beneficiary not more than twenty per cent (20%) building discount may be allowed to any purchaser who shall forthwith upon the purchase of such lot proceed to construct a building thereon in accordance with the restrictions applicable thereto.

In case of sales of lots on credit, not less than fifteen per cent (15%) of the total sales price shall be required as a first or down payment and the balance shall be payable in installments aggregating not less than twenty-four per cent (24%) per annum of the total sales price in each such case which may include interest at seven per cent (7%) or not at the option of the Beneficiary, said terms may be reduced with the consent of the Payee. This paragraph shall not, however, apply to sales of the acreage.

Article Sixth: It is understood and agreed that the Trustee shall issue no deed or conveyance (except sales made as hereinbefore provided by the taking of a note secured by a trust deed) to any portion of the Trust property, nor shall the Trustee reconvey any trust deed held by it hereunder until the said Trustee has credited to the Payee hereunder the [161] amount necessary to release the property so conveyed from the lien in favor of said Payee as is shown on the schedule of release prices in Exhibit "D" attached hereto, and when said release prices have been credited to the Payee then all right, title and interest of the Payee in and to said property shall cease and determine insofar as this Trust is concerned.

Upon the payment to it by the Beneficiary of the release price applicable thereto, the Trustee shall forthwith credit the Payee with such release price, and at the same time execute, acknowledge and deliver to the Beneficiary a reconveyance of any one or more of the parcels of acreage comprising said Group or Parcel 2, anything in this Declaration of Trust to the contrary notwithstanding. In no event, however, shall the Trustee be required to convey any greater title to any of the said property than was received by it under this Trust.

Article Seventh: It Is Understood and agreed that the property covered hereby shall be sold for cash or on terms, and if sold on terms, it may be optional with the Beneficiary to have the purchaser execute an agreement of sale for the balance of the purchase price, or instruct the Trustee to give a deed to the purchaser and the purchaser in turn execute a note in favor of the Security-First National Bank of Los Angeles secured by a purchase money Trust Deed for the balance of the

purchase price; provided the initial payment of thirty-five per cent (35%) of the selling price shall have been paid in cash and the note secured by the trust deed payable in installments at least equivalent to those provided for in Article Fifth hereof for the lots, parcels or acreage sold on terms. [162]

Article Eighth: The purchaser of each lot or parcel sold hereunder from January 1st to June 30th of any year shall pay all taxes for the calendar year in which the property was sold and thereafter. The purchaser of each lot or parcel sold from July 1st to December 31st of any year, shall pay the second half of taxes for the calendar year in which the property was sold and thereafter. All taxes for the fiscal year 1930-31 shall be pro rated by the said Beneficiary.

Article Ninth: The Trustee shall execute all agreements of sale, deeds and other instruments in writing, whatsoever requisite and necessary for the renting, leasing, transferring or conveying of said property or any portion thereof. Such agreements of sale and deeds shall be subject to conditions, restrictions, reservations and rights of way of record, if any, and shall also contain conditions and restrictions as shall be directed by the said Beneficiary and shall be subject to any and all ordinances of any city in which the property is located, or by any governmental or public agency creating or dealing with zones and prescribing the classes of buildings, structures and improvements in said zones and the use thereof.

The Trustee shall be under no liability or responsibility to the Beneficiary hereunder, nor to any other person, for the validity of any condition or restriction inserted in any agreement of sale or deed, nor shall the Trustee be called

upon to defend any suit, proceeding or action at law or in equity, to enforce the performance of, or enjoin the breach of, any such condition, restriction or ordinance, although the said Trustee may defend or prosecute [163] such action at its election upon the request of the said Beneficiary, or any other person, and upon being indemnified for its costs and expenses in any such suit or suits.

Article Tenth: The said Trustee shall not be required to attend to or procure any insurance upon any building upon said property, or to collect or disburse any rents thereof, so long as this Trust shall continue, but all such services shall be performed and the expenses thereof borne by the said Beneficiary, or its representatives.

Article Eleventh: During the continuance of these Trusts, the Trustee is authorized to pay: taxes levied and assessed against said property; any special assessment levied against said property, or any portion thereof, of which the Trustee shall receive due notice; and any other liens or charges against said property necessary for the preservation or maintenance thereof, but all of the above mentioned payments shall be at the expense of the Beneficiary hereunder, and the said Beneficiary, by its ratification of this Declaration of Trust, covenants and agrees to pay to the said Trustee sufficient moneys with which to pay the same before the same becomes delinquent.

Article Twelfth: The Trustee reserves unto itself the right, and shall have the power, solely within its discretion for the benefit of the Beneficiary hereunder, to replace, renew or extend any debt or incumbrance upon the Trust property, or any part thereof, when the same becomes due or at any time such replacement, renewal or

extension may be, in the judgment of said Trustee, for the best interests of this Trust or necessary to protect the Trust property; and upon such terms and upon such conditions and by such means of [164] security as said Trustee may deem proper, including the right and power to convey the fee title to said property, or any part thereof, to such person or corporation as it shall select for the purpose of executing and delivering the necessary note, mortgage, deed of trust, or other hypothecation, to evidence and secure such debt or debts and of reconveying said property to said Trustee subject thereto, and when such reconveyance shall have been so made, said Trustee shall thereupon be restored to its full estate hereunder.

It being distinctly understood that any such conveyance by said Trustee, for the purposes hereinabove stated, shall in no wise be construed as a suspension or termination of this Trust or as in any way impairing, changing or limiting the powers of the said Trustee, as herein expressed and intended. But the powers conferred by this Article shall not be exercised by the Trustee unless the Payee shall have been paid in full, except with its written consent.

Article Thirteenth: It Is Understood and Agreed by and between the parties hereto that the Trustee shall not be obligated to convey to the said Beneficiary, nor to any other person, any land covered by any existing agreement of sale, so long as such agreement is in force and effect, but shall be and is hereby authorized to retain the title to all of said land covered by such agreement until said agreement has been paid in full by the holder thereof, and the land shall then be deeded to the holder of said agreement in accordance with the terms thereof; nor shall the Trustee be obligated to convey, upon the order of the



Beneficiary hereunder, or upon the order of any party to this Trust, any property upon which an agreement to convey has been cancelled, until such time as a cancellation thereof has been effected in form satisfactory [165] to the said Trustee.

It is understood and agreed, however, that the Trustee, upon being indemnified by the Beneficiary for its costs, fees and expenses, shall, upon request of the said Beneficiary, take such legal action as may be necessary for the enforcement of the terms of any of the agreements then outstanding and in default, or take such legal action as may be necessary to obtain a Court Decree quieting its title or obtain such other acquittance as is satisfactory to the Trustee, to any portion of the Trust property upon which an agreement of sale has been, or is to be, forfeited, provided that the purchaser's unrecorded copy of such agreement has not been surrendered to the Trustee for cancellation, but all at the cost and expense of the said Beneficiary.

Article Fourteenth: It Is Understood and Agreed if said Beneficiary or its Agent or Agents shall represent, promise or guarantee to the purchaser or purchasers of the property covered hereby, that improvements shall be made upon said property at the expense of the Beneficiary hereunder, and said Beneficiary shall fail to put in and pay for any improvements so represented, promised or guaranteed, the Trustee hereunder shall have the authority, and is hereby given the express authority, to contract for and to have installed upon said property, at the expense of the Beneficiary hereunder, all or any of the improvements so represented, promised and/or guaranteed.



And said Trustee is hereby given the further authority and right to impound sufficient funds out of the moneys coming to the Beneficiary under this Trust, to pay for any or all of the improvements so represented, promised or guaranteed either by said Beneficiary or its Agent or Agents, [166] and/or ordered by the Trustee on behalf of said Beneficiary by reason of said Beneficiary failing to comply with any of the promises or representations so made.

The Beneficiary agrees to have filed with the said Trustee specifications covering the improvements so represented, promised or guaranteed, and should the Beneficiary fail so to do, the Trustee is hereby given the further authority to contract and pay for the improvements which in its sole discretion shall appear to said Trustee to meet the promises of the Beneficiary or its Agent or Agents, as set forth in the printed matter of the Beneficiary or its Agent or Agents, (copies of all such printed matter shall also be filed with the Trustee) or from evidence presented to the Trustee by purchasers of said Trust property.

Article Fifteenth: The Beneficiary may appoint an Agent or Agents at any time, and from time to time (with full power to revoke any such agency in its sole discretion) to render such services as the Beneficiary may deem advisable in connection with the sale of the Trust property, but any such Agent or Agents must be satisfactory to the Trustee hereunder, and each such Agency Appointment shall be in such form and shall contain such conditions and limitations as shall be satisfactory to the said Trustee. Said Trustee shall, however, in no event be liable to any person for any act, omission, default, defalcation or wrongdoing of any such Agent. [167]

Article Sixteenth: All proceeds and avails arising from the rents, issues, leases and sales of the Trust property, or otherwise, shall be paid to and received by the said Trustee, and said Trustee shall disburse all such proceeds and avails as follows:

I. As to sales made for cash the Trustee shall credit:

(a) To a "Release Fund" the amount necessary to release the lot, parcel or acreage so conveyed by the Trustee from the lien in favor of the Payee hereunder;

(b) To a "Commission and Expense Fund" the amount necessary to pay the commission and/or expenses owing any Agent or the Beneficiary for consummating such sale; and

(c) The balance to a "General Fund".

II. As to sales made for other than all cash the Trustee shall credit:

(a) To the Commission and Expense Fund all of the principal up to thirty-five per cent (35%) of the sales price first received by it from the sale of each lot, parcel or acreage.

Thereafter all of the principal so received shall be credited:

(b) Fifty per cent (50%) thereof to the Release Fund, or so much more as may be required in the sole judgment of the Trustee to pay the release price of the lot, parcel or acreage so sold, and

(c) The balance to the General Fund.

III. All proceeds and avails arising from the leases and rentals of said property so received by the said Trustee shall be credited to the General Fund. [168]

IV. All interest on agreements of sale and notes shall be credited to an "Interest Fund" out of which the Trus-

tee shall pay the interest, when due, upon the note in favor of the Payee hereunder.

Should the moneys in the hands of the Trustee available for that purpose be insufficient to pay said interest when due, and/or should the moneys in the General Fund be insufficient to supply any deficiency in said interest to said Interest Fund, then the Beneficiary by its ratification of this Declaration of Trust, covenants and agrees to pay any deficiency in the amount due on such interest to the Trustee for the benefit of the Payee hereunder.

Any overplus of interest shall be credited quarterly to the General Fund.

V. All moneys credited to the Commission and Expense Fund after deducting the Trustee's costs, fees and expenses (unless they are paid otherwise) shall be disbursed by the said Trustee upon the written instructions of the Beneficiary hereunder.

It is understood and agreed that the sale of each lot, parcel or acreage shall be considered separately and the receipts from the sale of that lot, parcel or acreage shall be used to pay commissions solely thereon. In case of a default in the payment of any agreement of sale or trust deed note before the full payment of commission due on said sale, pending such default, there will be no further commission paid on the balance due on said commission; and in the event any agreement of sale is cancelled by reason of default or non-payment, such cancellation shall automatically cancel the balance of commission due on the property covered [169] by said agreement of sale; and in the event that sales proceedings are held under any trust deed and it transpires that the Trustee becomes repossessed of any of the property at such trust deed sale, such sale shall automatically cancel the balance of commission due on the property covered by said trust

deed. If at such sale any person other than the said Trustee pays the full remaining purchase price plus interest and expenses of sale, then, in that event, the balance of the commission due on any such lot, parcel or acreage shall be paid from the proceeds of such sale.

VI. All moneys credited to the Release Fund shall be applied monthly upon the principal of the note secured hereby in favor of the Payee, interest to cease from the date of applications thereto, said moneys shall be disbursed monthly in multiples of One Hundred Dollars (\$100.00) with a minimum application of Five Hundred Dollars (\$500.00) to the Payee, its legal representatives or assigns.

VII. Out of the moneys credited to the General Fund the Trustee shall pay:

1st: Its accrued costs, fees and expenses as herein-after determined, unless they be sooner paid;

2nd: The taxes, assessments and installments of principal and interest on street bonds assessed or imposed on or against said property then due and unpaid, not payable by the purchaser thereof from the said Trustee.

Should the moneys in the hands of the Trustee available for that purpose be insufficient to pay said taxes and assessments, and installments of the principal and interest on the street bonds when due, then the Beneficiary by its ratification of this Declaration of Trust, covenants and agrees to immediately pay any deficiency in the amount due on said taxes, assessments and bonds to the Trustee. [170]

3rd: Any improvements upon the Trust property, upon the order of the Beneficiary hereunder, or its duly authorized Agent, and/or as contracted for by the Trustee as provided for in Article Fourteenth hereof;

4th: Interest, as and when due, on any note secured hereby, if there are not sufficient moneys in the Interest Fund with which to pay the same;

5th: Any liens or incumbrances covering the property sold, not payable by the purchaser thereof from the said Trustee;

6th: Principal upon any note secured hereby in favor of the Payee after the due date thereof; and

7th: Subject to the foregoing provisions, and provided the Beneficiary is not in default in any manner under the terms of this Declaration of Trust, all of the balance of the moneys received by the said Trustee shall be applied, disbursed and paid in convenient monthly installments to

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a Delaware Corporation,

the Beneficiary hereunder, its legal representatives or assigns.

The Trustee does not, either as Trustee or in any other capacity, assume or guarantee the payment of the indebtedness secured hereby, or any part thereof, nor does it guarantee the performance, in whole or in part, of any agreement of sale made hereunder by the purchaser thereunder.

It is further understood that the provisions of this Article relating to the payments to be made by the Trustee shall not be construed so as to impose any obligation upon the said Trustee, unless there shall be, at the time such payments become due, sufficient moneys in the hands of the Trustee belonging to this Trust to enable it to make such payments. [171]



Article Seventeenth: It Is Understood and Agreed that the costs, fees and expenses of the Trustee hereunder are as follows:

Section 1:

The sum of one-tenth (1/10th) of one per cent (1%) of the total sales price of the property described in Group or Parcel 1, and one-twentieth (1/20th) of one per cent (1%) of the total sales price of the property described as Groups or Parcels 2, 3 and 4, with a minimum of One Thousand Dollars (\$1,000.00) for the drawing, execution and acceptance of this Trust, provided, however, that the Trustee shall be entitled to, as part of its acceptance fee, the sum of One Dollar (\$1.00) per lot or parcel in each subdivision of the Trust property, with a minimum as above.

Section 2:

As to the lots hereinbefore described as Group or Parcel 1, which lots are now in subdivision forms, as follows:

(a) The sum of Two and 50/100ths Dollars (\$2.50) for each deed, agreement of sale (in duplicate) or other instrument in writing, drawn or executed by the Trustee in the administration of this Trust covering one lot or parcel only, and One Dollar (\$1.00) for each additional lot or parcel covered by said deed, agreement of sale and other instrument;

(b) Collection fees as follows:

The sum of two per cent (2%) of the sales price on sales made for all cash;

The sum of five per cent (5%) of the sales price, and interest, on sales made on terms if monthly payments are less than \$15.00;



The sum of three per cent (3%) on all other collections. If the sales price is \$5,000.00 or over per lot, parcel or acre, special rates will apply. [172]

(c) The sum of Ten Dollars (\$10.00) for the cancellation of any agreement of sale not including attorney's fees;

(d) The minimum fee of \$10.00 for the transfer of ordinary assignments of beneficial interest;

(e) The minimum fee of Twenty-five Dollars for assignments of beneficial interest through court orders;

(f) The charge of Five Dollars (\$5.00) per deed for placing the deed in escrow with a demand for the balance of the purchase price;

(g) The minimum charge of Ten Dollars (\$10.00) for each half day for appearance by the Trustee as a witness in Court;

(h) The Title Company's charge for individual guarantees of title or policies of title insurance, the Title Company's charge for the showing of title to the Trust property vested in the said Trustee, recording expenses, including the Recorder's charge for the recording of the deed to the Trust property, escrow expenses, the cost of printing forms of agreements of sale and deeds, and any other expenses necessary to consummate the sale of the property; and

(i) A reasonable compensation for any necessary service rendered by said Trustee in the execution of this Trust for which the costs, fees and expenses are not herein provided, including a reasonable compensation (in addition to the counsel fees and other expenses) for any service under this Trust by the said Trustee in connection with any action or proceeding at law (including any

arising from the death of any Beneficiary hereunder), or in paying or attending to the payment of any taxes or assessments in connection with any income tax, inheritance tax or estate tax matter affecting the Trustee, any Bene- [173] ficiary hereunder, or the Trust property or any portion thereof.

Mortgages or trust deeds given by purchasers to the Beneficiary, or assigned to the Beneficiary, to cover principal payments, are, for the purpose of determining collection fees, to be treated as cash payments, but if held by the Trustee and under similar terms as agreements of sale, the regular collection fees applicable to agreements to convey as hereinabove stated will be charged.

It Being Understood that in no event shall the fees above designated in subdivisions (a) and (b) of this Section aggregate less than one-tenth ( $1/10$ th) of one per cent ( $1\%$ ) of the lowest authorized sales price of the Trust property, with a minimum of Five Hundred Dollars (\$500.00) for each year or fractional year of the life of this Trust.

### Section 3:

As to the thirty-five (35) parcels of acreage hereinbefore described as Group or Parcel 2, the following schedule shall apply:

(a) An annual holding fee of one-twentieth ( $1/20$ th) of one per cent ( $1\%$ ) of the minimum listed selling price of the property;

(b) If the Beneficiary shall pay to the Trustee the release price for any such property, the Trustee shall make a reconveyance fee of one-tenth ( $1/10$ th) of one per cent ( $1\%$ ) of the minimum sales price of the property so released, with a minimum of Twenty-five Dollars (\$25.00) for each such release and reconveyance;

(c) If, when, and as any of said property in Group or Parcel 2 shall be subdivided, then the regular subdivision fees as set out in Section 1, shall be imposed upon said subdivision: [174]

(d) If the Trust shall be closed as to the unsubdivided portions of the trust estate after the payment of the indebtedness secured hereby in favor of the Payee, a fee of one-twentieth (1/20th) of one per cent (1%) of the minimum selling price of the property then reconveyed to the Beneficiary, its successors or assigns, shall be paid to the Trustee, with a minimum of One Hundred Dollars (\$100.00), which fee shall cover all fees and charges for such closing; and

(e) If the Trust shall be terminated in whole or in part prior to the sale and conveyance of all the Trust estate comprising Group or Parcel 1, or any portion of Groups or Parcels 2 and 4 subdivided prior to termination, said Trustee shall be entitled to receive one per cent (1%) of the value of the property transferred, as shown by the schedule or schedules of minimum sales prices then on file with the Trustee. No such termination shall, however, be made prior to the payment of the indebtedness owing the Payee hereunder.

Upon any such termination the Trustee shall not be required to convey any property upon which there are outstanding agreements to convey issued by it.

Article Eighteenth: The said Beneficiary, by its ratification of this Declaration of Trust, covenants and agrees to hold and save harmless the Trustee hereunder from any and all liability, claims, demands, injuries or damages which it may suffer or sustain by reason of the acceptance of this Trust and its position as Trustee hereunder, and

to protect said Trustee from any loss, damage, cost or expense by reason of the improvements of any character [175] whatsoever made on said property, and against all expenses incurred by any Agent of the Beneficiary or any Agent appointed by the Trustee at the request of the Beneficiary in the handling or sale of said property, and, upon demand of the Trustee, to furnish said Trustee with such further agreement of guaranty or indemnity as said Trustee shall deem necessary to protect said Trustee and said lands against any loss, damage, cost or expense by reason of such sale or improvements, but shall not be obligated by this Article to furnish any additional security.

Article Nineteenth: If the whole or any portion of the interest of the Beneficiary hereunder, or any Beneficiary, if there be more than one Beneficiary, or the proceeds or avails of any such interest, shall, at any time during the term or upon the expiration of this Trust, become liable for payment of any estate, inheritance, income or other tax, charge or assessment which said Trustee shall be required to pay, then, unless such taxes shall have been fully paid when due, by someone else, said Trustee is hereby authorized to pay such taxes before they shall become delinquent out of the whole or any portion of the interest so affected, and for that purpose is hereby generally and specifically authorized and empowered, without previous notice or demand to or from any person whomsoever, to sell at public or private sale, and convey sufficient portion of such interest up to the whole thereof as shall fully pay all such taxes, all costs and expenses of such sale, and all the sums, together with interest thereon at seven per cent (7%) per annum, payable quarterly, then due the Trustee under this Trust or which

it may have advanced or expended in the care, management [176] and protection of the Trust estate and in the payment of any of said estate, inheritance, income or other taxes thereon, and which said Trustee may be required to pay. Until such sums have been fully paid, they shall constitute a first lien on all the property subject to such tax in favor of said Trustee.

Article Twentieth: It Is Distinctly Understood that the interest under this Trust of the Beneficiary is personal property and that it has no right, title or interest in or to the property covered hereby, and has no rights or powers, except as herein expressly provided, to in any manner apply for or secure the dissolution or termination of this Trust, or the partition or the division of any of the Trust property; the sole right and power of the Beneficiary hereunder being to enforce the performance of the terms of this Trust, as expressly set forth in this Declaration.

Provided, However, that after the payment in full of the indebtedness secured hereby and the termination of the Agency Appointment, if any, made in accordance with the terms of this Trust, the Beneficiary, or if there are more than one, all of the Beneficiaries of this Trust, by a jointly written direction to the Trustee, may close and terminate this Trust. In no event, however, shall the Trustee be required to convey any property then covered by an existing agreement of sale executed by the Trustee, but the Trustee is expressly empowered and directed to retain the title to the property covered by any such existing agreement of sale, for the benefit of the Beneficiary hereunder. The proceeds and avails received from any such agreement of sale shall be applied by the Trustee, first, to the payment of any unpaid commission due, then



to the costs, fees and expenses of the Trustee, and the balance of the proceeds shall be paid by [177] the Trustee to the Beneficiary hereunder as its interest may appear.

Article Twenty-first: The Beneficiary hereunder authorizes the said Trustee to enter into a contract with a reliable Title Company, subject, however, to the prior written approval of the Beneficiary, authorizing said Title Company to issue individual guarantees of title or policies of title insurance on the lots or parcels in the subdivision or subdivisions of the Trust property, which contract shall be the usual form of said Title Company's contract for individual guarantees or policies of title insurance, and shall be issued by such Title Company at the times provided in contracts of sale.

Article Twenty-second: It Is Understood that the said Trustee makes no representation of fact as to the title to the property held under this Trust, but has the right to assume that the guarantee of title and/or policy of title insurance issued by any Title Company authorized to do business in the County in which the Trust property is situated, correctly shows the record title to said property and the incumbrances thereon.

Article Twenty-third: This Trust shall not cease or terminate in any event until all the costs, fees and expenses of said Trustee hereunder shall have been fully paid, nor until every party to this Trust has delivered to the Trustee for cancellation its copy of this Declaration of Trust.

Article Twenty-fourth: It Is Understood and Agreed that the term Beneficiary used herein shall include Beneficiaries; that the term Payee shall include [178] Payees;



that the masculine gender shall include the feminine and neuter genders; that the singular number shall include the plural number, all wherever and as the context of the language herein contained shall indicate.

Article Twenty-fifth: The Conditions and Provisions Hereof shall inure to and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. Provided, However, that no assignment of any interest in said property or in said Trust, or under the terms hereof, shall be binding upon the Trustee or shall be construed as notice to the said Trustee unless such assignment is in writing signed by the person transferring his interest, and also accepted in writing by the assignee to whom such assignment is made, and delivered to the said Trustee; together with Trustee's fee of Ten Dollars (\$10.00) as acceptance thereof, excepting only where such interest may pass or be transferred by Decree or Order of Court, and then only upon satisfactory proof of the regularity and validity of the proceedings in such matters being presented to said Trustee.

In Witness Whereof, the said Security-First National Bank of Los Angeles has caused these presents to be executed, in duplicate, in its name by its Vice President and Assistant Trust Officer, thereunto duly authorized, as of the 1st day of March, 1930.

SECURITY-FIRST NATIONAL BANK OF LOS  
ANGELES

By J. D. CARSON

Vice-President

EBB

By F. M. RILEY

Assistant Trust Officer [179]

We, the undersigned, do hereby certify and declare that we are the Beneficiary and the Payee named in the above and foregoing Declaration of Trust and that the above and foregoing Declaration of Trust No. SS-70401 of the Security-First National Bank of Los Angeles correctly and accurately sets forth and declares the trusts under and upon which said property is held by the said Trustee, and we do also hereby agree to and do approve, ratify and confirm the same in all particulars.

And the undersigned Beneficiary for itself and its successors and assigns does transfer, assign and convey to said Trustee title to the beneficial interests under said Trust for conveyance of said interest, or part or parts thereof, in event of a sale as provided in Article Second of said Declaration of Trust.

#### Beneficiary

In Witness Whereof, the said / F. P. Newport Corporation, Ltd. has caused these presents to be executed in its corporate name, in duplicate, by its ..... President and ..... Secretary, thereunto duly authorized, and its corporate seal hereunto affixed as of the 1st day of March, 1930.

F. P. NEWPORT CORPORATION, LTD.

Corporate  
Seal

Beneficiary  
By F. P. NEWPORT  
President  
By T. L. DUDLEY  
Secretary

#### Payee

In Witness Whereof, the said / Security-First National Bank of Los Angeles, Banking Department, has caused these presents to be approved and accepted in its corporate name, in duplicate, by its Vice President, there-

unto duly authorized, and its corporate seal hereunto affixed as of the 1st day of March, 1930.

SECURITY-FIRST NATIONAL BANK OF  
LOS ANGELES, Banking Department

Payee

Corporate  
Seal

By EUGENE GRENSTED  
Vice President

EBB  
JDC  
FMJ [180]

State of California  
County of Los Angeles—ss.

On this 25th day of March, A. D. 1930, before me M. B. Glenn, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared F. P. Newport known to me to be the President and T. L. Dudley known to me to be the Secretary of the F. P. Newport Corporation, Ltd., the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same, in duplicate.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Seal

M. B. GLENN  
Notary Public in and for said County  
and State.

My commission expires December 5, 1931.

State of California

County of Los Angeles—ss.

August

On this 11th day of ~~March~~, A. D. 1930, before me Carolyn F. Erhardt, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Eugene Grensted, known to me to be the Vice President of the Security-First National Bank of Los Angeles, the national banking association that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the association therein named, and acknowledged to me that such association executed the same, in duplicate.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

CAROLYN F. ERHARDT

Notary Public in and for said County  
and State.

My commission expires June 18, 1934. [181]

State of California

County of Los Angeles—ss.

F. P. Newport, President and T. L. Dudley .....  
Secretary, of F. P. Newport Corporation, Ltd., the Beneficiary herein named, each being duly sworn, each for himself, on behalf of said corporation, deposes and says, that the aforesaid Declaration of Trust is made in good faith

and without any design to hinder, delay or defraud any creditor or creditors.

Corporate  
Seal

F. P. NEWPORT  
President

T. L. DUDLEY  
Secretary

Subscribed and Sworn to before me this 25th day of March, 1930.

Seal M. B. GLENN  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires December 5, 1931.

Trust No. SS-70401

EBB:M

10 copies

Compared:

Read by MAM.

Approved by EBB. [182]

We hereby certify the foregoing to be a full, true and correct copy of the original Declaration of Trust Number SS-70401, comprising Pages 1 to 45, both inclusive, on file in our office, and that we have carefully compared the same with the original.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

EBB

By S. C. BAXTER  
Assistant Trust Officer

Dated August 12, 1930.

Notice: Assignments hereunder must be filed with the Trustee to be effectual.

Assignments should be executed in duplicate and both copies presented to the Trustee for endorsement; one copy for the Trustee, and one copy for the Assignee. The Assignor must present his copy of the Trust Declaration to the Trustee at the time of its endorsement on such assignment. (Forms for assignments of Beneficial Interest will be furnished by the Trustee.)

Each copy of this Declaration of Trust must be surrendered to the Trustee when the Trust is closed.

Trustee's minimum fee for ordinary assignments	\$10.00
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Trustee's minimum fee for assignments through Court Orders	\$25.00
--	---------

Declaration of Trust

No. SS-70401

EBB-MAM

10 copies

Compared:

Read by MAM

Approved by EBB [183]



Trust No. SS-70401

EXHIBIT "A"

\$39375.00

Los Angeles, California,

May 26th, 1928

Three (3) Years after date, for value received, I promise to pay to F. P. Newport, or order, at Los Angeles, California, the sum of Thirty-nine Thousand Three Hundred Seventy-five and No/100 Dollars, with interest thereon from date hereof until paid, at the rate of six (6%) per cent. per annum, payable quarterly.

Should interest not be so paid, it shall become part of the principal and thereafter bear like interest therewith. Should default be made in payment of interest when due, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due. Principal and interest payable in United States gold coin. This note is secured by a mortgage upon real property.

T. L. DUDLEY

(Endorsement)

Los Angeles, Cal. May 24th, 1929. Pay to the Order of Security-First National Trust & Savings Bank

F. P. NEWPORT

Compared by

MAM/EBB [184]

Trust No. SS-70401EXHIBIT "B"ASSIGNMENT OF BENEFICIAL INTEREST

For value received F. P. Newport Corporation, Ltd., a corporation, of Los Angeles, California, does hereby grant, assign, transfer and set over unto Security-First National Bank of Los Angeles its total beneficial interest in and to the trust evidenced by that certain Declaration of Trust dated March 12, 1930, and issued by Title Guarantee and Trust Company, a corporation, under its Trust No. P-1512, together with a like interest in and to the net proceeds and avails arising or growing out of the said trust, and said Trustee is hereby authorized to pay and turn over unto said assignee all moneys and benefits growing out of the said interest hereby assigned and to consider said assignee a beneficiary under said trust to the extent of said interest.

This assignment is made, however, subject to all of the terms and conditions of said Declaration of Trust, and of all instruments amending and/or supplementing said Declaration.

Dated March 20, 1930.

F. P. NEWPORT CORPORATION, LTD.,

Corporate  
Seal

By WM H. NEBLETT  
Vice President

Attest T. L. DUDLEY  
Secretary

- - - - -

ASSIGNEE'S ACCEPTANCE

The above assignment in and to said Trust No. P-1512 is hereby accepted, and I also hereby agree to and do approve, ratify and confirm said Declaration of Trust, and all instru- [185] ments amending and/or supplementing said Declaration, in all particulars.

SECURITY-FIRST NATIONAL BANK OF LOS  
ANGELES  
EBB

By S. C. BAXTER  
Asst. Trust Officer

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TRUSTEE'S ENDORSEMENT

The duplicate of this assignment filed in the Trust Department of Title Guarantee and Trust Company this 1 day of April, 1930.

TITLE GUARANTEE AND TRUST COMPANY,

By GEO. P. COLBY  
Asst. Secretary

Approved  
CHARLES R. WILSON  
Asst. Trust Officer  
Assignment Recorder  
by E. M. MITCHELL 4/1/30  
Trust Auditor

Compared  
EBB:M [186]

Trust SS-70401EXHIBITS "C" AND "C-I"

Exhibit "C" and Exhibit "C-I" are in a separate cover and accompany this copy of this Declaration of Trust as though attached hereto and made a part hereof.

The above exhibits are copies of Policies (2) of the Title Insurance and Trust Company, its No. 1178917, on the real property covered by this Declaration of Trust as referred to on Page 6 hereof. [187]

EXHIBIT "C"TRUST NO. SS-70401SCHEDULE OF MINIMUM SALES PRICES AND  
SCHEDULE OF RELEASE PRICES OF TRUST PROPERTY

Property Tract	Lot	Block	Group or Parcel No.	Group No. Re Newport Co.	Sales Price	Release Price
250	*Pt. 204		2-Ia-G	2	\$ 6,096.00	\$ 5,080.00
"	179½		" I-a A	2 )		
"	180½		" I-a "	2 )		
"	181½ & pt.		" I-a B	2 )		
"	Laurita Place			)		
"	184, 185,	)		)		
"	186, 188,	)		)		
"	189, 190 &	)	" I-a C	2 )	58,200.00	48,500.00
"	192	)		)		
"	S. ½ Colina Drive			)		
"	adjacent to 190	)	" I-a D	2 )		
"	& 192	)		)		
"	191 &			)		
"	Pt. Colina Drive	)	" I-a E	2 )		
"	193, 194 &	)		)		
"	195	)	" I-a F	2 )		
"	205 (Park)		" I-a F	2	97,560.00	81,300.00
"	Pt. 21		1 I-(A)	5	1,356.00	1,130.00
"	" 22		" I-(B)	5	1,764.00	1,470.00
"	" 103 (103C)		" I-(C)	5	1,020.00	850.00
"	" 175 (175A)		" I-(D)	5	1,020.00	850.00
"	" " (175B)		" I-(E)	5	1,020.00	850.00
"	" " (175C)		" I-(F)	5	1,020.00	850.00
"	" 178 (178B)		" I-(G)	5	1,116.00	930.00
"	" 179 (179A)		" I-(H)	5	1,116.00	930.00
"	" " (179B)		" I-(I-a)	5	1,116.00	930.00
"	" " (179C)		" I-(I-b)	5	1,116.00	930.00
"	" " (179D)		" I-(I-c)	5	1,116.00	930.00
"	" 181 (181C)		" I-(J)	5	1,356.00	1,130.00

\* (See above)

393	39	" II (Windsor Rd)	5	4,800.00	4,000.00
1000	2	2 II-a	1 )		
"	23	" II-a	1 )		
"	24	" II-a	1 )		
			)		
1335	1	" III-a	1 )		
"	2	" III-a	1 )	300,000.00	241,180.00
			)		
1336	4	" IV-a	1 )		
"	5	" IV-a	1 )		
"	6	" IV-a	1 )		
"	7	" IV-a	1 )		
1473	66	1 III	5	1,284.00	1,070.00
"	75	1 III	5	336.00	280.00
"	76	1 III	5	1,224.00	1,020.00
"	192	1 III	5	1,356.00	1,130.00
"	193	1 III	5	1,356.00	1,130.00

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Tract	Lot	Block	Group or Parcel No.	Group No. Re Newport	Sales Price	Release Price
1473	194		1 III	5	\$ 1,356.00	\$ 1,130.00
"	195		1 III	5	1,356.00	1,130.00
"	196		1 III	5	1,356.00	1,130.00
"	205		1 III	5	1,224.00	1,020.00
"	207				1224.	1020.
"	206		1 III	5	1,224.00	1,020.00
"	208		1 III	5	1,224.00	1,020.00
"	209		1 III	5	1,224.00	1,020.00
"	234		1 III	5	672.00	560.00
2016	21	1	1 IV	5	252.00	210.00
Pacific Terminal)	21	4	1 IV	5	252.00	210.00
"	23	"	1 IV	5	252.00	210.00
"	28	"	1 IV	5	252.00	210.00
"	22	7	1 IV	5	312.00	260.00
"	28	"	1 IV	5	312.00	260.00
"	19	8	1 IV	5	252.00	210.00
"	21	"	1 IV	5	252.00	210.00
"	22	"	1 IV	5	252.00	210.00
"	27	"	1 IV	5	312.00	260.00
"	7	9	1 IV	5	252.00	210.00
"	15	20	1 IV	5	252.00	210.00
"	21	"	1 IV	5	252.00	210.00
"	17	22	1 IV	5	540.00	450.00
"	4	23	1 IV	5	672.00	560.00
"	15	28	1 IV	5	960.00	800.00
"	13	29	1 IV	5	1,356.00	1,130.00
Triangular piece at NE corner Tr. 2016			1 XV	5	1,356.00	1,130.00
(See Maria Delores Dominguez de Watson—Ro. San Pedro)						
2052	16		1 V	5	336.00	280.00

76      *Security-First National Bank, L. A., etc.*

4044	1	1 VI	5	1,200.00	1,000.00
"	2	1 VI	5	672.00	560.00
"	3	1 VI	5	672.00	560.00
"	4	1 VI	5	672.00	560.00
"	6	1 VI	5	672.00	560.00
"	7	1 VI	5	672.00	560.00
"	20	1 VI	5	366.00	280.00
"	27	1 VI	5	366.00	280.00
5719	1	1 VII	5	1,020.00	850.00
"	2	1 VII	5	1,020.00	850.00
"	3	1 VII	5	1,020.00	850.00
6158	1	1 VIII	5	504.00	420.00
"	2	1 VIII	5	336.00	280.00
"	3	1 VIII	5	336.00	280.00
"	4	1 VIII	5	336.00	280.00
"	5	1 VIII	5	336.00	280.00
"	6	1 VIII	5	336.00	280.00
"	8	1 VIII	5	336.00	280.00
"	9	1 VIII	5	336.00	280.00
"	10	1 VIII	5	336.00	280.00
"	11	1 VIII	5	336.00	280.00
"	12	1 VIII	5	336.00	280.00
"	13	1 VIII	5	408.00	340.00
"	14	1 VIII	5	408.00	340.00
"	15	1 VIII	5	408.00	340.00
"	16	1 VIII	5	504.00	420.00

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Tract	Lot	Block	Group or Parcel No.	Group No. Re Newport Co.	Sales Price	Release Price
6158	17		1 VIII	5	\$ 372.00	\$ 310.00
"	18		1 VIII	5	336.00	280.00
"	20		1 VIII	5	336.00	280.00
"	23		1 VIII	5	336.00	280.00
"	25		1 VIII	5	336.00	280.00
"	26		1 VIII	5	336.00	280.00
"	27		1 VIII	5	336.00	280.00
"	28		1 VIII	5	336.00	280.00
"	29		1 VIII	5	336.00	280.00
"	30		1 VIII	5	336.00	280.00
"	31		1 VIII	5	504.00	420.00
"	32		1 VIII	5	336.00	280.00
"	33		1 VIII	5	336.00	280.00
"	34		1 VIII	5	336.00	280.00
"	35		1 VIII	5	336.00	280.00
"	36		1 VIII	5	336.00	280.00
"	37		1 VIII	5	336.00	280.00
"	38		1 VIII	5	372.00	310.00
"	39		1 VIII	5	408.00	340.00
"	40		1 VIII	5	480.00	400.00
"	41		1 VIII	5	540.00	450.00
"	42		1 VIII	5	960.00	800.00
"	a )					
"	43-b )		1 VIII	5	744.00	620.00
"	c )					
"	44-a		1 VIII	5	312.00	260.00



"	44-b	1 VIII	5	312.00	260.00
"	45-a	1 VIII	5	312.00	260.00
"	45-b	1 VIII	5	312.00	260.00
"	46-a	1 VIII	5	312.00	260.00
"	46-b	1 VIII	5	312.00	260.00
"	47-a	1 VIII	5	312.00	260.00
"	47-b	1 VIII	5	312.00	260.00
"	48-a	1 VIII	5	312.00	260.00
"	48-b	1 VIII	5	312.00	260.00
"	49-a	1 VIII	5	312.00	260.00
"	49-b	1 VIII	5	312.00	260.00
"	50-a	1 VIII	5	312.00	260.00
"	50-b	1 VIII	5	312.00	260.00
"	51-a	1 VIII	5	312.00	260.00
"	51-b	1 VIII	5	312.00	260.00
"	52	1 VIII	5	672.00	560.00
6409	12	1 IX	5	672.00	560.00
"	13	1 IX	5	816.00	680.00
"	14	1 IX	5	672.00	560.00
"	15	1 IX	5	816.00	680.00
"	22	1 IX	5	1,680.00	1,400.00
"	23	1 IX	5	1,356.00	1,130.00
"	24	1 IX	5	1,356.00	1,130.00
"	25	1 IX	5	1,680.00	1,400.00
"	26	1 IX	5	1,920.00	1,600.00
"	27	1 IX	5	1,356.00	1,130.00
"	28	1 IX	5	1,680.00	1,400.00
"	32	1 IX	5	1,920.00	1,600.00
"	33	1 IX	5	1,824.00	1,520.00
"	34	1 IX	5	2,040.00	1,700.00
"	35	1 IX	5	1,356.00	1,130.00
"	36	1 IX	5	1,920.00	1,600.00
"	37	1 IX	5	1,224.00	1,020.00

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Tract	Lot	Block	Group or Parcel No.	Group No. Re Newport Co.	Sales Price	Release Price
6409	38		1 IX	5	\$ 1,680.00	\$ 1,400.00
"	39		1 IX	5	1,470.00	1,180.00
"	40		1 IX	5	1,356.00	1,130.00
"	41		1 IX	5	1,470.00	1,180.00
"	42		1 IX	5	1,356.00	1,130.00
"	43		1 IX	5	1,470.00	1,180.00
"	44		1 IX	5	1,470.00	1,180.00
"	45		1 IX	5	1,680.00	1,400.00
"	46		1 IX	5	3,048.00	2,540.00
"	47		1 IX	5	2,712.00	2,260.00
"	48		1 IX	5	2,712.00	2,260.00
"	49		1 IX	5	2,664.00	2,220.00
"	50		1 IX	5	2,040.00	1,700.00
"	51		1 IX	5	2,040.00	1,700.00
"	52		1 IX	5	1,680.00	1,400.00
"	54		1 IX	5	1,824.00	1,520.00
"	55		1 IX	5	2,040.00	1,700.00
"	56		1 IX	5	1,224.00	1,020.00
"	57		1 IX	5	1,152.00	960.00
"	58		1 IX	5	1,152.00	960.00

"	59		1 IX	5	1,152.00	960.00
"	60		1 IX	5	1,152.00	960.00
"	61		1 IX	5	1,152.00	960.00
"	62		1 IX	5	1,152.00	960.00
7146	Pt. 4		1 X(A)	No sales price or release price		
"	Pt. 5		1 X(B)		" listed	"
"	Pt. 8		1 X(C)		"	"
"	Pt. 9		1 X(D)		"	"
"	Pt. 12		1 X(E)		"	"
"	Pt. 13		1 X(F)		"	"
(Dominguez	6	1	1 XI	5	408.00	340.00
(Harbor Tract	4	7	1 XI	5	408.00	340.00
"	1	9	1 XI	5	408.00	340.00
"	5	25	1 XI	5	408.00	340.00
"	4	29	1 XI	5	408.00	340.00
"	7	29	1 XI	5	408.00	340.00
"	35	29	1 XI	5	408.00	340.00
(Maria Delores	Pt. 6		1 XV	5	1,356.00	1,130.00
(Dominguez de <u>Note</u> : Said property is triangular.						
(Watson Att'l. parcel at NE corner Tract 2016.						
(Fernbrook	1	A	1 XII	5	1,560.00	1,300.00
Place	2	"	1 XII	5	1,200.00	1,000.00
"	10	"	1 XII	5	1,200.00	1,000.00
"	11	"	1 XII	5	1,200.00	1,000.00
"	12	"	1 XII	5	1,200.00	1,000.00
"	13	"	1 XII	5	1,500.00	1,250.00
"	16	"	1 XII	5	4,080.00	3,400.00
"	17	"	1 XII	5	2,844.00	2,370.00
"	18	"	1 XII	5	2,844.00	2,370.00
"	19	"	1 XII	5	2,844.00	2,370.00
"	20	"	1 XII	5	3,024.00	2,520.00
"	21	"	1 XII	5	3,024.00	2,520.00
"	22	"	1 XII	5	4,080.00	3,400.00
"	23	"	1 XII	5	2,400.00	3,000.00
"	3	B	1 XII	5	1,320.00	1,100.00
"	6	"	1 XII	5	1,080.00	900.00
"	11	"	1 XII	5	3,120.00	2,540.00
"	12	"	1 XII	5	3,120.00	2,540.00
"	13	"	1 XII	5	3,120.00	2,540.00

Tract	Lot	Block	Group or Parcel No.	Group No. Newport Co.	Sales Price	Release Price
(Long Beach	(1/4 int. in					
(Harbor Tract	( 14	7	1 XIII	(No sales or release price listed)		
"	" 5	20	1 XIII	5	\$ 408.00	\$ 340.00
(Rcho Los	Pt. 20		2-V-a (A)	4 )		
(Cerritos	"		& (B)	)		
"	" 30-Wilmington		2-V-a (C)	4 )	72,000.00	60,000.00
"	" 31	Colony-	2-V-a (C)	4 )		

t. Rcho Los Cerritos (desig- ated as Lots 18, 20 and 21) ap Bk. 1/10 Ass't Mp)-com- only referred to as "Harbor" rontage". )				3	4	264,000.00	220,000.00
lvias de	1	3	1-XIV (A)	5		2,712.00	2,260.00
rdugo	12	5	1-XIV (A)	5		1,692.00	1,410.00
"	1	6	1-XIV (A)	5		3,120.00	2,600.00
"	E 20'-	23	1-XIV (A)			(No sales or release price listed)	
"	28	11	1-XIV (A)		" " " " " "		
"	1	18	1-XIV (A)	5		1,152.00	960.00
"	4	18	1-XIV (A)	5		1,020.00	850.00
"	7	20	1-XIV (A)	5		1,224.00	1,020.00
"		Pt.-22	2-VII (C)	2		10,800.00	9,000.00
"	1	23	2-VII-a ) (A)&(B) )	3		48,720.00	40,600.00
Also portion of Bonita Drive							
"		24	2-VII-a (D)			(No sales or release price listed)	
"	20	25	1-XIV (A)		" " " " " "		
"	1	26	1-XIV (A)		" " " " " "		
"	21	26	1-XIV (A)		" " " " " "		
"	1	27	1-XIV (B)	5		1,692.00	1,410.00
"	2	27	1-XIV (B)	5		1,356.00	1,130.00
"	1	29	1-XIV (C)	5		672.00	560.00
"	15	29	1-XIV (C)	5		540.00	450.00
"	1 )						
"	2 )	30	1-XIV (C)	5		1,080.00	900.00
"	3	30	1-XIV (C)	5		408.00	340.00
"	7	30	1-XIV (C)	5		960.00	800.00
"	8	30	1-XIV (C)	5		960.00	800.00
"	Pt.- 8	31	1-XIV (D)			(No sales or release price listed)	
"	" - 8	31 )	1-XIV (F) )	5		1,224.00	1,020.00
"	" - 4	32 )	1-XIV (E) )	5		1,824.00	1,520.00
"	" - 8	32	1-XIV (G)	5		408.00	340.00
"	" - 3	34	1-XIV (H)	5		408.00	340.00
"	" - 4	34	1-XIV (H)	5		5,400.00	4,500.00
"	(6	34	1-XIV (H)	5			
(Lewis House)							
"	16	34	1-XIV (H)	5		240.00	200.00
"	1	36	1-XIV (I)	5		1,524.00	1,270.00
"	2	36	1-XIV (I)	5		1,200.00	1,000.00
"	4	36	1-XIV (I)	5		1,200.00	1,000.00
"	6	36	1-XIV (I)	5		1,200.00	1,000.00
"	1	38	1-XIV (I)	5		1,470.00	1,180.00
"	3	38	1-XIV (I)	5		1,020.00	850.00
"	4	39	1-XIV (J)	5		1,620.00	1,350.00
"	8	39	1-XIV (J)	5		1,116.00	930.00
"	26	39	1-XIV (J)	5		1,116.00	930.00
"	28	39	1-XIV (J)	5		1,116.00	930.00
"	31	39	1-XIV (J)	5		1,116.00	930.00
"	32	39	1-XIV (J)	5		1,116.00	930.00
"	34	39	1-XIV (J)	5		1,116.00	930.00
"	35	39	1-XIV (J)	5		1,116.00	930.00

Tract	Lot	Block	Group or Parcel No.	Group No. Re Newport	Sales Price	Release Price
Selvas de Verdugo	1	40	1-XIV (J)	5	\$ 1,356.00	\$ 1,130.00
"	23	40	1-XIV (J)	5	1,224.00	1,020.00
"	27	40	1-XIV (J)	5	1,200.00	1,000.00
"	28	40	1-XIV (J)	5	1,200.00	1,000.00
"	29	40	1-XIV (J)	5	1,200.00	1,000.00
"	Pt. 32	40	1-XIV (J)	5	1,200.00	1,000.00
"	" 1	41			(No sales or release price listed)	
"	" 2	41	1-XIV (J)		" " "	" "
"	3	41	1-XIV (J)	5	960.00	800.00
"	4	41	1-XIV (J)	5	1,116.00	930.00
"	8	41	1-XIV (J)	5	1,200.00	1,000.00
"	9	41	1-XIV (J)	5	1,200.00	1,000.00
"	12	41	1-XIV (J)	5	1,200.00	1,000.00
"	13	41	1-XIV (J)	5	1,200.00	1,000.00
"	14	41	1-XIV (J)	5	1,200.00	1,000.00
"	16	41	1-XIV (J)	5	1,200.00	1,000.00
"	21	41	1-XIV (J)	5	1,692.00	1,410.00
"	22	41	1-XIV (J)	5	1,356.00	1,130.00
"	25	41	1-XIV (J)	5	1,356.00	1,130.00
"	31	41	1-XIV (J)	5	1,356.00	1,130.00
"	33	41	1-XIV (J)	5	1,356.00	1,130.00
"	37	41	1-XIV (J)	5	1,200.00	1,000.00
"	1	42	1-XIV (J)	5	1,692.00	1,410.00
"	2 )					
"	Pt. 3 )					
"	" 4 )	42	1-XIV (J)		(No sales or release price listed)	
"	" 6 )					
"	" 7 )					
"	" 8	42	1-XIV (J)	5	516.00	430.00
"	9	42	1-XIV (J)	5	1,020.00	850.00
"	10	42	1-XIV (J)	5	1,020.00	850.00
"	11	42	1-XIV (J)	5	2,400.00	2,000.00
"	" 18 )					
"	" 19 )					
"	" 21 )	42	1-XIV (J)		(No sales or release price listed)	
"	" 22 )					
"	1	43	1-XIV (J)	3	2,040.00	1,700.00
"	2	43	1-XIV (J)	3	1,224.00	1,020.00
"	3	43	1-XIV (J)	3	1,356.00	1,130.00
"	4	43	1-XIV (J)	3	1,020.00	850.00
"	5	43	1-XIV (J)	3	1,020.00	850.00
"	6	43	1-XIV (J)	3	960.00	800.00
"	7	43	1-XIV (J)	3	816.00	680.00
"	8	43	1-XIV (J)	3	816.00	680.00
"	9	43	1-XIV (J)	3	672.00	560.00
"	11	43	1-XIV (J)	3	2,040.00	1,700.00
"	12	43	1-XIV (J)	3	1,020.00	850.00
"	13	43	1-XIV (J)	3	1,080.00	900.00
"	14	43	1-XIV (J)		1,020.00	850.00
"	16 )					
"	Pt. 17 )	43	1-XIV (J)		(No sales or release price listed)	
"	" 19 )					
"	" 20 )	43	1-XIV (J)		2,400.00	2,000.00
"	" 21 )					

Tract	Lot	Block	Group or Parcel No.	Group No. Re Newport	Sales Price	Release Price
erdugo state .	Pt. 3		2-VI-a	3	\$ 94,080.00	\$ 78,400.00
20 acres of ) eodora and ) atalina Ver- ) ngo 47.95 ) llotment )			2-VIII-a	3	3,360.00	2,800.00
.50 acres ) above ) llotment )			2-IX	3	10,200.00	8,500.00

BB:M  
5 copies  
COMPARED:  
IAM: EBB

No. 25308-M Re: F. P. Newport, Bankrupt McAdoo & Neblett vs. Sec.-First Nat'l.  
Bank McAdoo & Neblett Exhibit No. 3 Filed Apr. 19, 1937 Ernest R. Utley, Referee  
I. K.

[194]

[Title of District Court and Cause.]

# PETITION FOR ORDER TO SHOW CAUSE WHY TRUSTEE SHOULD NOT BE DIRECTED TO PAY 1938 AND 1939 FEDERAL INCOME TAXES

## I.

Comes Now the United States of America, by and through its attorneys, Charles H. Carr, United States Attorney for the Southern District of California, E. H. Mitchell, Assistant United States Attorney for District, and Eugene Harpole, Special Attorney of the Bureau of Internal Revenue, and respectfully represents and shows to this Court as follows:

That on the 8th day of April 1943, the *United District* Court for the Southern District of California, Central Division, made and entered its decision and Order in the

above entitled proceeding, pursuant to the Mandate of the Circuit Court of Appeals for the Ninth Circuit, by which it was determined, adjudged and decreed that said bankrupt estate and the Trustee in Bankruptcy, as such trustee, are indebted to the United States of America in the sum of \$19,363.65 for 1938 and 1939 income taxes.

That notwithstanding said Decision and Order of the District [18] Court said trustee in Bankruptcy has wholly failed, neglected and refused to pay said 1938 and 1939 income taxes or any part thereof, or the interest thereon, and the same and the whole thereof remains unpaid.

That your petitioner is informed and believes that the Security First National Bank of Los Angeles claims an interest in and the right to receive all of the available funds in the above entitled bankrupt estate.

Wherefore, your petitioner prays that an Order issue from this Court addressed to H. R. Metcalf, as Trustee in Bankruptcy, and the Security First National bank of Los Angeles, directing them to appear and show cause, if any they have, why the Trustee in Bankruptcy should not be ordered to pay the 1938 and 1939 federal income taxes, together with interest thereon.

Dated, this 24th day of September, 1943.

CHARLES H. CARR, E. H.

United States Attorney

E. H. MITCHELL E. H.

Asst. United States Attorney

EUGENE HARPOLE

Special Attorney, Bureau of Internal Revenue.

[Endorsed]: Filed Sep. 24, 1943, at 10 Min. past 12 o'clock P. M. Ernest R. Utley, Referee, by Phyllis Gray, Clerk.

[Endorsed]: Filed Oct. 18, 1944. [19]



[Title of District Court and Cause.]

ANSWER OF SECURITY-FIRST NATIONAL  
BANK OF LOS ANGELES TO PETITION OF  
UNITED STATES OF AMERICA RE PAY-  
MENT OF 1938 AND 1939 INCOME TAXES

Comes now Security-First National Bank of Los Angeles, a national banking association, and answering the petition of the United States of America for an Order to Show Cause why H. F. Metcalf, as Trustee in Bankruptcy for F. P. Newport Corporation, Ltd., a corporation, Bankrupt, should not be directed to pay the 1938 and 1939 Federal income taxes, and denies and alleges as follows:

I.

The said Security-First National Bank of Los Angeles admits that it claims an interest in and to the right to receive all of the available funds in the above entitled bankrupt estate, as will more particularly appear herein.

II.

The said Security-First National Bank of Los Angeles denies that the United States Government, or any other person, firm or corporation, other than said Bank, has any lien or interest, or is entitled to receive all or any portion of the funds mentioned in the Petition of the United States of America, or in this answer thereto. [20]

III.

That on or about March 1, 1930, F. P. Newport Corporation Ltd., a corporation, borrowed from Security-First National Bank of Los Angeles, the sum of \$760,000.00, which is the same debt as that mentioned in the contract of January 12, 1937, more particularly hereinafter mentioned, including accretions thereto by way of accumula-

tion of interest, additional borrowings, advances for taxes, and for Trustee's fees and expenses.

#### IV.

On or about March 1, 1930, F. P. Newport Corporation, Ltd. a corporation, conveyed to the Security-First National Bank of Los Angeles title to certain real property by four different Grant Deeds, the same being recorded in Book 9902, page 28, Book 9868, page 150, Book 9850, page 181, and Book 9838, page 216, respectively, of Official Records of Los Angeles County, California. Concurrently with the execution of said Grant Deeds to said Bank, the said Bank executed and delivered to F. P. Newport Corporation, Ltd., its certain written Declaration of Trust, under date of March 1, 1930, now known and referred to as Trust No. D 7224, formerly known and numbered Trust SS 70401, by the terms of which it acknowledged that it had received a conveyance of said property as Trustee, with power of sale, as security for the payment of said loan of \$760,000.00 made by said bank to the said F. P. Newport Corporation Ltd., and as security for all advances, costs, Trustee's fees, and expense advanced and incurred under the terms of said Declaration of Trust, and upon all of the terms and conditions of said Declaration of Trust No. D 7224.

Thereafter F. P. Newport Corporation, Ltd., by three different Grant Deeds, conveyed to said Bank title to certain additional real property, under and pursuant to the terms of said Declaration of Trust, and as additional security for the payment of said indebtedness, said deeds being recorded in Book 11510, Page 239, Book 11493, page 271, and Book 9929, page 62, respectively of Official Records of [21] Los Angeles County, California.

That the properties transferred to said Bank and now held by it pursuant to the terms of said Declaration of Trust, consist largely of real property, some of which is located in what is known as "Verdugo Woodlands", and some in the San Fernando Valley, and some in the Wilmington Harbor Area. The Verdugo Woodlands property consists partly of subdivided lots and partly of unsubdivided acreage; the San Fernando Valley property consists of a ranch of approximately 320 acres, less the acreage sold by the above court; the Wilmington Harbor property consists of a number of subdivided lots, nine acres of which is on what is known as Channel No. 3 of the Long Beach Harbor, and approximately 20 acres of unsubdivided property in said harbor area.

V.

That on or about March 1, 1930, F. P. Newport Corporation, Ltd., as further and collateral security for the aforementioned indebtedness, by written assignment, pledged to the Security-First National Bank of Los Angeles the entire beneficial interest in and to said Trust No. D 7224. That on May 16, 1933, the said Bankrupt Corporation, F. P. Newport Corporation, Ltd., and F. P. Newport and Letitia J. Newport, his wife, granted to said Security-First National Bank of Los Angeles all of their right, title and interest in and to the real property situated on Channel No. 3, in the Long Beach Harbor area, containing nine acres more or less, together with the proceeds and avails therefrom, the said Grant Deed being recorded in Book 1226, page 21 of Official Records of Los Angeles County. That said property so conveyed had previously been conveyed to the said Bank on March 20, 1930, and said deed of May 16, 1933, confirmed and ratified said prior conveyance to said Bank. That the

legal title to said nine acre parcel of land was then vested in Title Guarantee & Trust Co., as Trustee. That subsequently to said above mentioned conveyance and prior to the execution of the oil lease hereinafter referred to, the said Bank at the request of H. F. Metcalf, Trustee in Bankruptcy, [22] and upon the order of the above entitled Bankruptcy Court, did advance a large sum of money to compromise the claims of various persons in and to said nine acre tract of land. That upon said adverse claims being so satisfied and discharged the legal title to said nine acre tract was conveyed to Security-First National Bank of Los Angeles, to be held by said Bank subject to the terms and conditions of said Declaration of Trust D 7224, and the contract of January 12, 1937, as supplemented, modified and amended. That under the order of the said Bankruptcy Court, said advance was added to and became a part of the indebtedness owing to said Bank by said Trustee in Bankruptcy and said Bankrupt. That under the terms of said Declaration of Trust No. D 7224, and the said Agreement of January 12, 1937, as supplemented, modified and amended, said real property and the rents, issues and profits thereof were held by said Security-First National Bank of Los Angeles, as Trustee, to secure the payment of all of the obligations owing by said Trustee in Bankruptcy and said Bankrupt to said Bank.

## VI.

The indebtedness secured by said Declaration of Trust and the collateral pledge of the Beneficial Interest therein being long past due, the said Security-First National Bank of Los Angeles, as Trustee under said Declaration of Trust, did in accordance with the provisions of said Declaration of Trust declare the entire unpaid balance of the obligation to be due, and fixed the date for the

sale of the real property belonging to said Trust for March 29, 1935.

## VII.

On March 19, 1935, an Involuntary Petition in Bankruptcy was filed against the above named Bankrupt. Thereafter, and on or about March 25, 1935, H. F. Metcalf was appointed Receiver in Bankruptcy of all the property and assets of the above named Bankrupt Corporation, including the property held in said Trust, and the above entitled Court duly restrained said Security-First National Bank of Los Angeles from proceeding with said foreclosure sale. [23]

## VIII.

That on or about March 25, 1935, said H. F. Metcalf duly qualified as such Receiver and went into possession of the property and assets of said Bankrupt Corporation, including the real property conveyed to said Security-First National Bank of Los Angeles, as Trustee, as hereinabove alleged.

## IX.

That from time to time thereafter, and prior to the 12th day of January, 1937, said Bank made application to the above entitled court for leave to foreclose and sell that certain real property held by it under the said Trust No. D 7224. That the court, over the objection of said Security-First National Bank of Los Angeles, continued said restraining order in full force and effect.

## X.

That subsequent to the 25th day of March, 1935, and prior to the adjudication of said F. P. Newport Corporation, Ltd., as a Bankrupt, extensive negotiations and conferences were had by and between the Security-First National Bank of Los Angeles, the Receiver and their re-



spective counsel, and other interested parties, looking to, and in an effort to, devise a method for the liquidation of the properties held by said Bank under its Trust hereinabove mentioned, and to obviate the necessity of litigation between said Bank and said Bankrupt Estate. Following these conferences and negotiations, an agreement in writing, bearing date of January 12, 1937, was made and executed by and between the Bankrupt Corporation, the said Bank and the said Receiver, which agreement was subsequently supplemented and modified.

### XI.

That the said agreement, together with a supplement thereto, and modifications thereof, was duly approved, ratified and confirmed by this court, and the District Court of the United States of America. That thereafter an appeal from the order so approving and ratifying said agreement, supplement thereto and modifications thereof, was taken to the United States Circuit Court of *Appeal* (Ninth Circuit) which court affirmed the said order. That a Petition for a Writ of Certiorari to review the said order was filed with the Supreme Court of the United States and said Petition was denied. [24]

### XII.

Thereafter, on January 12, 1937, said F. P. Newport Corporation, Ltd., was duly adjudicated a bankrupt.

### XIII.

Under date of February 25, 1937, Hubert F. Laugharn, was appointed Trustee in Bankruptcy, and was succeeded as Trustee on March 18, 1937, by H. F. Metcalf, who ever since said date has been and now is in possession of the property and assets of the Bankrupt Corporation, as such Trustee. That said contract as supplemented and



modified was duly signed by said H. F. Metcalf as Trustee in Bankruptcy under the order and direction of the Bankruptcy Court.

#### XIV.

By the terms of said agreement as so supplemented and modified, it was stipulated that the principal amount of the indebtedness due to said Security-First National Bank of Los Angeles amounted to \$1,304,918.77, and should be payable in installments as therein provided, and that all indebtedness due said Bank should be paid on or before September 7, 1940. The said agreement, as modified, among other things, provides:

“That while the said Declaration of Trust No. D 7224 and the contract of January 12, 1937, provide expressly that all moneys from Sales and Leases of Property in said Trust shall be paid to and be received by the Bank, it is, nevertheless, agreed, in order to comply with the bankruptcy law requiring that all bankruptcy funds be accounted for by the Trustee and be distributed by him only upon checks or warrants countersigned by the Referee, that all such moneys shall be paid to said Trustee in Bankruptcy, and, until the indebtedness due the Bank has been paid, shall be by him forthwith paid over in full to the Bank, to be distributed in accordance with the terms of said Trust No. D 7224 and the agreement of January 12, 1937, as modified hereby. [25]

“Recognizing that the Bank has a prior right to the moneys in the preceding paragraph mentioned until the indebtedness due it has been paid, it is therefore expressly understood and agreed that such funds or moneys so paid to and received by the said Trustee in Bankruptcy from Sales or Leases or other dispo-

sition of property under said Trust shall, until the indebtedness due the Bank has been paid and except as hereinafter provided, be, while in his possession, impressed with the lien of the Declaration of Trust securing the indebtedness owing to the Bank, and such funds or moneys shall be deposited by the Trustee in Bankruptcy in a separate bank account and not commingled with any other funds of the Bankrupt Estate, and shall be deemed earmarked for application on the Bank's indebtedness as provided in said agreement of January 12, 1937, and this supplement thereto, and except as in said agreement and said supplement provided, shall not, until the indebtedness due the Bank has been paid, become any part of the general assets of the Bankrupt Estate."

#### XV.

Thereafter, and with the approval of the Court, said Trustee in Bankruptcy, and Security-First National Bank of Los Angeles, as Trustee, and the Bankrupt, did on or about the 14th day of January, 1938, make and enter into a lease with the Universal Consolidated Oil Company, as Lessee, under and by the terms of which there was let to said Lessee a portion of the real property of said Bankrupt Estate, the title to which stands of record in the name of said Security-First National Bank of Los Angeles, as Trustee, and as security for the obligation owing to said Bank, for the purpose of producing oil and gas from said property. Thereafter the Lessee discovered oil and gas on said property and has produced oil and gas therefrom in commercial paying quantities. [26]

## XVI.

That pursuant to said Order of Court, approving said agreement, supplement, and modifications, the oil royalties received by said Trustee in Bankruptcy from the Universal Consolidated Oil Company have been deposited in a special account carried in the name of the Trustee in Bankruptcy heréin with the Head Office of the Security-First National Bank of Los Angeles, Sixth and Spring Streets. That all royalties so received by said Trustee, with the exception of approximately \$11,222.19, were and have been, from time to time, disbursed by said Trustee in Bankruptcy to said Bank, with the approval of the court, and were in turn credited by said Bank, on advances and on the interest and the principal of the said obligation owing to it.

## XVII.

That said Trustee in Bankruptcy under and by virtue of said agreement, supplement and modification thereof, has received and disbursed oil royalties to the said Security-First National Bank of Los Angeles, and said Bank, under and by virtue of said Declaration of Trust, Assignment and Beneficial interest, and said Agreement, Supplement and modifications, has, ever since the date of the first receipt of said royalties, been in possession of said royalties, subject only to the technical possession of the Trustee in Bankruptcy in the first instance.

## XVIII.

That no portion of said royalties constitutes a part or parcel of the general assets of the Bankrupt Estate, but

the same constitutes a part of the security of the Security-First National Bank of Los Angeles for the indebtedness owed by the Bankrupt, and no portion thereof can be applied to or on account of any tax claims of the United States Government, or for the purpose of the payment of the expenses of the administration of said Bankrupt estate. [27]

### XIX.

That at no time since the date of adjudication has the Bankrupt been in possession of the real property or oil royalty securing the indebtedness due the said Security-First National Bank of Los Angeles.

### XX.

That the said Trustee in Bankruptcy ever since the date of said Bankruptcy has been and now is in physical possession of the real property, the title to which stands in the name of the Security-First National Bank of Los Angeles, as Trustee, for and on behalf of said Bank as security for the payment of the above mentioned indebtedness.

### XXI.

That there remains unpaid, due and owing to Security-First National Bank of Los Angeles by the Bankrupt Estate the principal sum of \$617,303.12, together with interest thereon from January 7, 1943, at the rate of four per cent (4%) per annum, compounded quarterly, and Trust advances in the sum of \$17,897.73, and Trustee's fees in the sum of \$4,518.22, all of which is secured by

the above mentioned Declaration of Trust No. D 7224, and the Agreement of January 12, 1937, as modified and amended, as above set forth.

Wherefore, said Security-First National Bank of Los Angeles prays:

(1) That the United States of America be denied any relief whatsoever under its Petition.

(2) That the court decree that under and by virtue of said Declaration of Trust and Assignment of Beneficial Interest therein and the Agreement of January 12, 1937, the supplement thereto and modifications thereof, that the said Security-First National Bank of Los Angeles has a first and prior lien on all of the real property subject to the terms of said Declaration of Trust, and on the rents, issues and profits therefrom, and is entitled to receive, without [28] deduction, all of the oil royalties, rents, issues and profits derived from the said real property securing the indebtedness due it from the said Bankrupt, to the exclusion of the United States of America, or any other person, firm or corporation.

(3) That the court decree that the Trustee in Bankruptcy is in possession of said real property, oil royalties, rents, issues and profits derived from the said real property, for and on behalf of said Security-First National Bank of Los Angeles.

(4) That the court order the Trustee in Bankruptcy to continue to disburse to the Security-First National Bank of Los Angeles said oil royalties, and other rents, issues

and profits in compliance with the Court orders approving the Agreement of January 12, 1937, the supplement thereto and modifications thereof, free and clear of any claim of the United States, or of the Trustee's expenses of administration, and

(5) For such other and further relief as may be proper.

SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES

By R. T. Adams  
Asst. Secty.

W. C. SHELTON and  
GEORGE W. BURCH, JR.

By W. C. Shelton  
Attorneys for Security-First  
National Bank of Los Angeles [29]

[Verified Oct. 13, 1943.]

Received copy of the within Answer this ..... day of October, 1943. Eugene Harpole, Attorneys for United States of America.

Received copy of the within Answer this 13th day of October, 1943. Bailie, Turner & Lake, SY, Attorneys for H. F. Metcalf, Trustee in Bankruptcy for F. P. Newport Corpt. Ltd.

[Endorsed]: Filed Oct. 13, 1943 at ..... Min. past 2 o'clock P. M. Ernest R. Utley, Referee; B M Clerk.

[Endorsed]: Filed Oct. 18, 1944. [30]



[Title of District Court and Cause.]

ANSWER OF H. F. METCALF, AS TRUSTEE IN  
BANKRUPTCY HEREIN, TO PETITION OF  
UNITED STATES OF AMERICA RE PAY-  
MENT OF 1938 AND 1939 INCOME TAXES

Comes now H. F. Metcalf, as Trustee in Bankruptcy herein, and answering the petition of United States of America for an order to show cause why said Trustee should not be directed to pay the 1938 and 1939 federal income taxes, and alleges as follows:

I.

That said Trustee in Bankruptcy has not paid the 1938 and 1939 income taxes in the amount of \$19,363.65 for the reason that he has not had sufficient funds with which to pay such taxes.

II.

That on or about January 12, 1937, an agreement was made and entered into by and between the Security-First National Bank of Los Angeles, the F. P. Newport Corporation, Ltd., and H. F. Metcalf as Trustee in Bankruptcy of F. P. Newport Corporation, Ltd. That the said agreement, together with a supplement thereto and modifications thereof, was duly approved, ratified and confirmed by this Court and the said District Court. That thereafter an appeal from the order so approving and ratifying said agreement, supplement thereto and [31] modifications thereof, was taken to the United States Circuit Court of *Appeal* (Ninth Circuit) which Court affirmed the said order. That a petition for a writ of certiorari to review the said order was filed with the Supreme Court of the United States and that said petition was denied.

## III.

That by the said agreement as so supplemented and modified it was provided that the principal amount of the indebtedness due to Security-First National Bank of Los Angeles amounted to \$1,304,918.77 and should be paid in installments as therein provided and that all indebtedness due said Bank should be paid on or before September 7, 1940. That in and by said agreement, approved by this Court, it is provided as follows:

“That while the said Declaration of Trust No. D 7224 and the contract of January 12, 1937, provide expressly that all moneys from Sales and Leases of Property in said Trust shall be paid to and be received by the Bank, it is, nevertheless, agreed, in order to comply with the bankruptcy law requiring that all bankruptcy funds be accounted for by the Trustee and be disbursed by him only upon checks or warrants countersigned by the Referee, that all such moneys shall be paid to said Trustee in Bankruptcy, and, until the indebtedness due the Bank has been paid, shall be by him forthwith paid over in full to the Bank, to be distributed in accordance with the terms of said Trust No. D 7224 and the agreement of January 12, 1937, as modified hereby.

“Recognizing that the Bank has a prior right to the moneys in the preceding paragraph mentioned until the indebtedness due it has been paid, it is therefore expressly understood and agreed that such funds or moneys so paid to and received by the said Trustee in Bankruptcy from Sales or Leases or other disposition of property under said Trust [32] shall, until the indebtedness due the Bank has been paid and except as hereinafter provided, be, while in his posses-

sion, impressed with the lien of the Declaration of Trust securing the indebtedness owing to the Bank, and such funds or moneys shall be deposited by the Trustee in Bankruptcy in a separate bank account and not commingled with any other funds of the Bankrupt Estate, and shall be deemed earmarked for application on the Bank's indebtedness as provided in said agreement of January 12, 1937, and this supplement thereto, and except as in said agreement and said supplement provided, shall not, until the indebtedness due the Bank has been paid, become any part of the general assets of the Bankrupt Estate. No provision of said agreement of January 12, 1937, or this supplement thereto is made or entered into, directly or indirectly, for the purpose of fixing the amount of the fees or other compensation to be paid to any party in interest or any attorney of any party in interest in this bankruptcy proceeding, for services rendered in connection therewith or otherwise, and the fixing and determination of any fees or compensation to be paid to anyone whomsoever from the assets of this Bankrupt Estate, is, in accordance with the law, left entirely to the determination of the court having jurisdiction of this bankruptcy proceeding, unaffected by any provision, term or condition, express or implied, of said contract of January 12, 1937, or of this supplement thereto."

#### IV.

That by and with the approval of this Court said Trustee in Bankruptcy made and entered into a lease with Universal Consolidated Oil Company, as Lessee, under and by the terms and provisions of which there was let to said Lessee a portion of the real property of this estate

for the purpose of prospecting for and producing oil and gas from said property. That subsequent to the execution of the [33] said lease the Lessee discovered oil on said property and has produced oil and gas therefrom. That in pursuance of the terms of the said lease said Lessee has paid to said Trustee in Bankruptcy royalties on said gas and oil so produced from said property. That the royalties so paid to said Trustee have been in excess of \$100,000.00, all as will more fully appear from the Trustee's reports on file herein.

#### V.

That pursuant to an order of this Court the oil royalties received by said Trustee from Universal Consolidated Oil Company have been deposited in a special account carried in the name of the Trustee in Bankruptcy herein with the head office of the Security-First National Bank of Los Angeles, Sixth and Spring Streets. That, from time to time, said Trustee has paid to said Bank in excess of \$100,000.00 out of the funds so deposited in said account. That the said payments were made with the approval of this Court and were credited by said Bank on the principal of the obligation owing to it. That said Trustee has on deposit in said account at the present time the sum of \$11,222.19, all of which represent royalties received from said Universal Consolidated Oil Company pursuant to the terms of the said lease.

#### VI.

That the legal title to the said real property covered by the said lease to Universal Consolidated Oil Company stands of record in the name of the Security-First National Bank of Los Angeles as security for the obliga-

tion owing to said Bank, all as more particularly set forth in said agreement of January 12, 1937, as supplemented and modified as aforesaid.

## VII.

That said Security-First National Bank of Los Angeles claims and asserts that it has a lien on all of the rents, issues and profits derived from said real property, including a lien on all [34] oil royalties paid or to be paid under the terms and conditions of said lease with Universal Consolidated Oil Company, and asserts that its lien is superior and paramount to any right which United States of America may have in the matter of the payment of said income taxes. That said Bank claims and asserts that United States of America is not entitled to receive any of the oil or gas royalties hereinbefore mentioned or to have its said claim paid out of said royalties or any part thereof. That said Trustee in Bankruptcy has no other funds with which to pay said income tax claim.

## VIII.

That the income taxes due United States of America for the years 1938 and 1939 are not entitled to priority over any other expense of administration of this estate. That if United States of America is entitled to have its claim for said taxes paid out of any of the royalties hereinbefore mentioned, then other expenses of administration should be paid out of the same funds on equal parity with the said claim.

Wherefore The Trustee In Bankruptcy Herein Prays: That this Court determine whether or not the expenses of administration, including the claim for income taxes due United States of America, are payable out of oil royalties received or to be received from the Universal Consolidated

Oil Company, and for such other and further relief as may be proper.

H .F. Metcalf

As Trustee in Bankruptcy of F. P. Newport  
Corporation, Ltd.

BAILIE, TURNER & LAKE

By Allen T. Lynch

Attorneys for said H. F. Metcalf. [35]

[Verified Sept. 30, 1943.]

[Endorsed): Filed Oct. 1, 1943, at ..... Min. past 5  
o'clock P. M. Edmund L. Smith, Clerk; by E. N. En-  
strom, Jr., Deputy.

[Endorsed]: Filed Nov. 3, 1943. [36]

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[U. S. EXHIBIT NO. 1—BY REFERENCE]

Exhibit "A"

AGREEMENT.

This Agreement, made and entered into this 12 day of January, 1937, by and between F. P. Newport Corporation, Ltd., a Delaware Corporation, with its principal place of business in the City of Los Angeles, State of California, hereinafter called the Bankrupt, H. F. Metcalf, as Receiver for F. P. Newport Corporation, Ltd., an alleged Bankrupt, hereinafter called the Receiver, and Security-First National Bank of Los Angeles, a National Banking Association, with its principal place of business in the City of Los Angeles, State of California, hereinafter called the Bank, Witnesseth:



## Recitals:

The Bankrupt is indebted to the Bank for money loaned to the Bankrupt, or advanced for its use, under the terms of the Trust Declaration, hereinafter referred to, and for costs and expenses incurred by the Bank in connection therewith, in the following sums, to-wit:

1. Unpaid principal, evidenced by promissory notes executed by the Bankrupt to the Bank .....	\$ 1,013,928.78
2. Interest on said notes, up to February 1, 1937 .....	\$ 219,887.25
3. Trust advances for benefit of the Trust Estate, under the terms of said Trust .....	\$ 105,365.93
4. Interest on said Trust advances to February 1, 1937.....	\$ 9,871.75
5. Necessary costs and expenses incurred by the Trustee in connection with the preservation of the Bank's security for its indebtedness.....	\$ 2,402.67
6. Interest thereon to February 1, 1937..	\$ 273.00
<hr/>	
Total.....	\$ 1,351,729.38

All of said indebtedness is secured by the property conveyed by the Bankrupt to the Bank, as Trustee, in Trust with power of sale, to secure the same, and by a Pledge by the Bankrupt of the entire beneficial interest in and to the said Trust. Said Trust is evidenced by a written Declaration of Trust No. D 7224, formerly numbered S S 70401, signed by the Bank under date of March 1, 1930, and approved on said date by the Bankrupt. Reference is hereby made to said Declaration of Trust for the full terms and conditions thereof.

All of said indebtedness is long overdue, and no interest on said indebtedness has been paid by the Bankrupt for several years and all taxes and assessments on the Trust properties have been advanced by the Bank for several years. [68]

An involuntary Petition to have the Bankrupt adjudicated a Bankrupt, has been pending since the month of March, 1935. Said Petition is at issue, but is still undecided.

Upon the filing of said involuntary Petition in Bankruptcy, to-wit: on or about the 27th day of March, 1935, the Bankruptcy Court before which said Petition was pending, issued its Order restraining and enjoining the Bank from foreclosing its said security for said indebtedness. Said restraining order is now, and ever since said date has remained in full force and effect.

On or about the 27th day of March, 1935, the Court appointed the above named Receiver, H. F. Metcalf, as Receiver in Bankruptcy, for properties of the Bankrupt, and he thereupon duly qualified and ever since said date has been, and now is, acting as such Receiver.

The Bankrupt and the Receiver are desirous of further postponing the foreclosure by the Bank of said security, for non-payment of said indebtedness, and are desirous of starting the immediate liquidation of said indebtedness of the Bank, by the sale of certain of the real properties held by the Bank in said above referred to Trust.

The Bank is willing to delay further the foreclosure of the said security and will agree to the immediate sale of certain of the assets in said Trust on the terms, and subject to the conditions hereinafter contained, and not otherwise, hence this Agreement.

The Agreement.

Order of Court allowing

Receiver to execute Required.

The Receiver agrees to petition the Bankruptcy Court forthwith for leave to execute this agreement. Should the Court refuse to grant leave to the Receiver to so execute this agreement, and thereafter the Receiver fail to execute it, the Bank, at its election, shall have the right to cancel this agreement.

Adjudication of Bankruptcy required.

The Bankrupt, F. P. Newport Corporation, Ltd., agrees that it will make no resistance whatever in the pending petition to have it declared a bankrupt, said Petition and Answer now being set for hearing on January 12, 1937, before the Honorable Paul J. McCormick, Judge of the Bankruptcy Court. It is understood and agreed that unless a Decree adjudicating said corporation a Bankrupt be entered prior to the 15th day of January, 1937, and that said order thereafter become final without appeal, that this contract, at its option, may be terminated and cancelled by the Bank. [69]

Approval by Trustee and Court.

Immediately upon a Trustee in Bankruptcy being appointed by the Court in said proceeding, this contract shall be presented, by proper petition of the Trustee, to the Bankruptcy Court, for its approval, and for an order authorizing the said Trustee in Bankruptcy to become a party thereto and be bound by the terms and conditions thereof. The approval of the said Bankruptcy Court and the due execution of this Contract by the said Trustee

shall be conditions precedent to the said contract continuing as a binding and effective obligation on the Bank, and should said Court refuse to approve this agreement, or should the Trustee fail to execute the same, and become bound by all of the terms and conditions thereof within (5) days after the order approving the same has been entered, then this contract shall become utterly void and of no further force and effect, and the Bank shall be relieved of any and all obligations thereunder.

#### Reduction of Indebtedness.

Provided the above conditions are complied with, the Bank agrees to reduce the amount of the debt due it from the Bankrupt, as of the first day of February, 1937, to the sum of \$1,270,451.12, and to waive the difference between the amounts due as of said date, and said sum of \$1,270,451.12.

#### Reduction of Interest.

The said sum of \$1,270,451.12 shall bear interest, from February 1, 1937, at the rate of four per cent (4%) per annum, payable quarterly, and if not so paid, to bear like interest as the principal. It is agreed, however, that the first installments of interest shall be payable on August 1, 1937.

The principal of said indebtedness shall be payable as follows:

1. \$ 35,000.00 on or before six months from February 1, 1937.
2. \$ 65,000.00 on or before 12 months from February 1, 1937.
3. \$250,000.00 on or before 24 months from February 1, 1937.

4. \$150,000.00 on or before 30 months from February 1, 1937.
5. The balance of said indebtedness on or before thirty-six (36) months from February 1, 1937.

Foreclosure of Security for  
Breach of Agreement.

So long as all of the terms and conditions of this agreement are complied with by the other parties hereto, the Bank agrees not to foreclose the security held for the payment of said indebtedness.

It is distinctly understood and agreed, however, that should any installment of principal or interest be not paid as herein provided, or any taxes or assessments, be not paid ten days prior to the delinquency thereof, [70] or any of the terms and conditions of this agreement, and the Declaration of Trust, herein referred to, be not complied with in the manner and at the times herein, and in said Declaration of Trust provided, that the Bank, except as otherwise provided for herein, may at it's option call immediately due and payable the entire amount of the indebtedness then owing by the Bankrupt, or the Bankrupt Estate, and may immediately foreclose the security held by it, by such procedure as is provided for in said Declaration of Trust, or may foreclose the same by an action in court; provided, however, that the Bank expressly waives the right to foreclose the beneficial interest in said Trust as a pledge, as provided for in said Declaration of Trust, and also waives the provision of said Trust contained on page 12 commencing in line 23 with the word "or" and up to and including the word "code" in line 27. Notwithstanding anything to the contrary herein contained, it is agreed that the Bankrupt, or the Trus-



tee in Bankruptcy shall have sixty (60) days after written notice within which to remedy any default for which notice has been given, before the Bank shall have the right to accelerate deferred payments of said indebtedness, and commence foreclosure of said security. The said sixty day notice herein provided for, shall be deemed the sixty day notice provided for in said Declaration of Trust.

#### Waiver of Statute of Limitations.

In consideration of the execution of this agreement, the Bankrupt, the Receiver and the Trustee, when appointed, qualified, and upon becoming a party hereto, expressly waive the provisions of any statute limiting the time when any action may be brought by the Bank on the indebtedness hereinabove referred to, or hereinafter incurred pursuant to the terms of this agreement and/or the Trust herein referred to.

#### Waiver of Defenses in Foreclosure.

It is understood that one of the principal considerations moving to the Bank in this agreement is the willingness of the other parties hereto to waive any and all defenses they may claim to have to the foreclosure of the security held by the Bank, other than as to the correct amount claimed to be due the Bank. It is, therefore, expressly agreed that, provided the debt be then due, as provided for herein, in any foreclosure proceeding brought pursuant to the terms of said Declaration of Trust, and/or this agreement, no defense thereto will be made, other than to determine the correct amount remaining due and unpaid from the Bankrupt to the Bank, at the time of said foreclosure. And [71] it is expressly agreed that



the parties hereto will not seek to enjoin or delay such foreclosure, if and when brought by the Bank.

To enable the Trustee, hereinafter appointed, to make the payment of taxes, assessments, interest and principal herein provided to be made at the times herein specified, and to do all other things herein agreed to be done, it is understood and agreed that the Trustee may negotiate for the immediate sale of certain parcels of real property now held in said Trust, and described in a Schedule annexed hereto, marked Exhibit "A", and hereby referred to and made a part hereof.

All properties not described in said Exhibit "A" shall be retained in said Trust and be leased or sold on terms and conditions satisfactory to the Bank and the Trustee in Bankruptcy, and shall be subject to the approval of the Bankruptcy Court.

Any and all sales of said real property described in Exhibit "A" shall be on terms and conditions satisfactory to the Bank and the Trustee in Bankruptcy, and shall be subject to the approval of the Bankruptcy Court.

All contracts for the sale of said property shall be issued by the Bank. All payments for any of the Trust property shall be made to the Bank.

#### Release Price Agreed Upon.

In this connection, the Bank agrees, provided no default exists which has not been cured within sixty (60) days, as Provided for Herein, to convey the above described parcels of said property to such purchaser or purchasers as the Trustee in Bankruptcy may direct, when there shall have been paid to the Bank, as release prices thereon, the amount of money agreed upon by the parties hereto, and set forth in Exhibit "A" attached hereto; provided, how-

ever, that where the Bank shall have executed and delivered a contract of sale for any part or portion of said property to any third party, no release, transfer or conveyance thereof shall be demanded for said property other than to the Buyer thereof under said contract, so long as said sales contract remains outstanding.

#### Release Price Credited Only on Principal.

All sums received on the release price of said property shall be credited upon only the principal of the Bankrupt's obligations to the Bank: it being expressly agreed that all payments of interest, taxes and assessments and further Trust Advances and expenses, except as hereinafter provided, shall be made by the Trustee in Bankruptcy from funds otherwise in the Bankrupt's estate, or from funds, if any, in the hands of the Bank, as Trustee, as hereinafter provided. [72]

#### Distribution of proceeds from Sales.

Out of the first money paid to the Bank, on any sale of said Trust Properties, there shall first be paid all costs of sale, including commissions and Title Charges, not to exceed, however, twenty per cent. (20%) of the sale price of said property.

#### The Special Fund.

All moneys thereafter received on said sales contracts shall be placed by the Bank in a special fund until the amount of the principal remaining due on said sales contract equals the amount of the release price agreed upon for the parcel of property so sold.

Thereafter all such payments shall be applied upon the principal of the indebtedness owing to the Bank by the Bankrupt until the release price has been fully paid.

All interest on any contract or Trust Deed note shall, when received, be placed by the Bank in the Special Fund.

#### Disbursement of the Special Fund.

Out of the Special Fund, the Bank shall pay all taxes, assessments, insurance, interest and other charges and expenses of said Trust No. D 7224 not theretofore paid by the Trustee in Bankruptcy. After payment out of said Special Fund of all current interest, taxes, assessments and Trust Expense, and after first setting aside in said Special Fund a reserve sufficient to pay all interest, taxes, assessments and Trust Expense for one additional year, the remainder of the money in said Special Account shall be paid over to the Trustee in Bankruptcy.

#### Use of Paper to Meet Quotas on Principal.

Although installment payments on the principal of the Bankrupt's agreed obligations have been hereinabove provided to be made on specific dates, it is, nevertheless, understood and agreed that said payments or quotas of the debt will be deemed to have been met, provided that for such portion thereof as shall not have been paid in cash, the Bank shall hold, as trustee of said Trust, Sales Contracts, or First Trust Deeds received from the sale of said real estate sufficient in amount so that the release prices payable thereon shall equal the amount of the unpaid portion of the said principal payments or quotas. The Bank reserves the right to approve or disapprove of said paper for this purpose, but such right shall not be exercised in an arbitrary or unreasonable manner.

Such paper, so approved by the Bank, for said purpose, shall only be available for said purpose so long as it remains in good standing, and without [73] any delinquency in the payments thereon. Should any such paper become delinquent in any respect, the Trustee in Bankruptcy shall have sixty (60) days after notice thereof, to effect a reinstatement thereof or to provide new paper acceptable to the Bank in lieu thereof. Failure to so reinstate said paper or to replace the same, or to pay in cash the amount for which it has been accepted on the quotas, shall constitute a breach of this agreement, entitling the Bank to proceed with the foreclosure of its security without giving any additional notice of such breach of agreement.

Such paper shall not be accepted by the Bank as payment on said indebtedness, but only as security therefor.

Temporary Collection of rents by  
Trustee in Bankruptcy.

Although the Bank, under the express terms and conditions of said Trust No. D 7224, is entitled to execute all leases for Trust Property, and to demand and receive all rents, issues and profits from the properties held by it in Trust, the Bank agrees that, for a period of one (1) year from the first day of February, 1937, the Receiver, and, after his appointment, the Trustee in Bankruptcy, may collect and use all such rents, issues and profits, except the rents, issues and profits from oil, as hereinafter provided, up to a maximum of seven thousand dollars (\$7,000.00). All excesses above said sum to be promptly paid over to the Bank to be applied upon such of the obligations due the Bank by the Bankrupt as the Bank may elect to apply them upon. It is, however,

expressly agreed that hereafter all leases and rental agreements shall be made and executed by the Bank, as provided for in said Trust Declaration.

Should there not be paid over to the Trustee in Bankruptcy out of the Special Fund, as hereinabove provided, the sum of \$7,000.00 during the second year, then out of the said rents, issues and profits from said real property there shall be paid over to said Trustee in Bankruptcy sufficient to equal the said sum of \$7,000.00.

#### Oil Income and its Distribution.

The right to collect such rents, issues and profits by the Trustee in Bankruptcy, as is provided for herein, shall be expressly subject to the condition that any rents, issues and profits from any of said property for bonuses, rentals, or royalties for or from any oil lease thereon, shall be collected only by the Bank, and shall in no event be paid over to, or collected by said Trustee in Bankruptcy. [74]

All income from Oil, in the nature of bonuses, rentals and royalties from any of the properties held by the Bank in Trust, so paid to the Bank, shall be placed by the Bank in a Special Oil Account.

The funds in said Account shall be available to the Trustee in Bankruptcy for the purpose of making up any deficiency in the "Special Fund", to pay interest, taxes, assessments and expenses, as hereinabove provided, in order to obviate a default; provided, however, that all sums taken from said Oil Account for such purpose shall be repaid to said Oil Account from moneys thereafter coming into Special Fund and not needed to pay other or additional interest, taxes, assessments, or expenses then due.

Except as herein provided, all amounts in said account, shall be applied on September first and March first of



each year, or on such other dates as shall be mutually agreed upon by the Trustee in Bankruptcy and the Bank, on the principal of said indebtedness, and shall be considered as cash applied on the quotas of principal as hereinbefore set forth.

The said Declaration of Trust provides that the Bank may pay, purchase, contract or compromise any claims, liens, or incumbrances which in its judgment appear to effect said property or the Trust.

#### Payment of Claims Against Harbor Property.

Pursuant thereto, it is understood and agreed that the Bank may in its discretion, purchase, settle, or compromise, the claim of any and all third persons claiming an interest in or to the Long Beach Harbor Tract, lying on Channel No. 3 of the Long Beach Harbor, or in or to any proceeds from the sales thereof, and to that end may make all necessary advances to accomplish said purposes, and all such advances shall become a part of the principal of the Bankrupt's indebtedness and shall bear interest at the rate of four per cent. (4%) per annum. It is understood that the claims referred to arise out of a certain contract or agreement known as the Syndicate No. 1 Agreement between F. P. Newport and certain third parties who furnished a portion of the purchase price of said property.

#### No dividends to General Creditors pending sale of Trust Property.

Since it is contended by the Bank that the security held by it is insufficient to pay the Bankrupt's obligations, and that it will, therefore, probably become an unsecured creditor for a substantial deficiency, it is expressly agreed



that no liquidating dividends shall be paid to the creditors of said Bankrupt Estate until all of the security held by the Bank shall have been sold, and the [75] amount of such deficiency shall be ascertained, to the end that the Bank may participate in such dividends, if any. Provided, however, that nothing herein contained shall be deemed to prevent the Trustee in Bankruptcy from paying such amounts as may be necessary to clear the title to any property not covered by the Trust.

Upon the execution of this agreement by the Trustee in Bankruptcy, all defaults existing shall be deemed to have been waived by the Bank.

#### Overlapping Quotas to Apply.

Should payments in excess of any one quota of principal be made prior to the due date thereof, such excess payments shall be construed as applying on the next maturing quota of principal.

Notwithstanding anything to the contrary herein provided, it is agreed that, upon any default occurring, and which shall not be cured within sixty (60) days from date of notice as hereinabove provided, no further or additional money in any fund or funds held by the Bank shall be paid out of the Trust by the Bank, but all such sums of money held in any such fund shall be applied by the Bank, at its option, on any indebtedness then due the Bank.

Notwithstanding anything hereinabove to the contrary, the Bank agrees to advance and pay, prior to delinquency, the second installment of taxes for the year 1936-37 on the property held by it in said Trust No. D 7224. All money so advanced shall draw interest at the rate of 4%

per annum, payable quarterly, and if not so paid shall bear like interest as the principal of said advances.

Such advances shall be repaid to the Bank out of any money held by it in the "Special Fund", provided such fund shall have in it at all times sufficient money to assure the payment of the installment of interest falling due on August 1, 1937.

It is agreed, however, that if there is sufficient money in the "Special Fund" to pay said taxes, and to assure the payment of the installment of interest falling due on August 1, 1937, then the Bank shall be under no obligation to advance and pay said taxes.

The terms and conditions of the above-mentioned Declaration of Trust No. D 7224 shall be and they hereby are modified to conform to the terms and conditions hereof.

Other than as modified hereby, the terms and conditions of said Declaration of Trust shall be and they hereby are re-affirmed, ratified and approved. [76]

This agreement shall be executed by the parties hereto, and immediately upon the appointment of a Trustee in Bankruptcy for said Bankrupt, and his due qualification, and upon the Bankruptcy Court approving this agreement, and authorizing him to execute the same as such Trustee, he shall sign and deliver to the Bank an executed copy thereof, and thereupon he shall, as such Trustee, be bound by the terms and conditions thereof.

This Agreement, in so far as the Receiver in Bankruptcy is concerned, is subject to the approval of the Bankruptcy Court.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first herein-above written.

(Seal) F. P. NEWPORT CORPORATION,  
LTD.

By F. P. Newport  
President

By J. B. Gribble  
Secretary

H. F. Metcalf

As Receiver for F. P. Newport Corporation, an Alleged Bankrupt

(Seal) SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES

By J. E. Hatch  
Vice President

By Randall Boyd  
Ass't. Secretary.

I, ....., the Trustee in Bankruptcy for F. P. Newport Corporation, Ltd., a Bankrupt, having been duly appointed, and having duly qualified as such Trustee in Bankruptcy, and being first duly authorized as such Trustee in Bankruptcy, to execute the above agreement, do hereby acknowledge that I have read the above contract, and do hereby approve the same, and do hereby agree to be bound by all of the terms and conditions thereof, as such Trustee in Bankruptcy.

Dated: ....., 1937.

.....  
As Trustee in Bankruptcy for F. P. Newport Corporation, Ltd. [77]

## Exhibit "A."

Parcels and Release Prices thereon referred to  
in the foregoing Agreement.

Parcel	Lots 204-205 Tract		
No. 1.	No. 250	Release Price	\$ 65,000.00
Parcel	Lot 3 Verdugo Estates;		
No. 2.	Plus portions of		
	Tract 7146 and		
	Blocks 25 and 26,		
	Selvas de Verdugo	" "	\$ 45,000.00
Parcel	Remaining portion of		
No. 3.	Tract, 250, plus		
	Block 22 of Selvas		
	de Verdugo	" "	\$ 40,000.00
Parcel	All of the remaining		
No. 4	subdivided lots in		
	the Verdugo area,		
	together with Block		
	23 & 24 Selvas de		
	Verdugo and the		
	portion of the Theo-		
	dore Verdugo allot-		
	ment	" "	\$130,000.00
Parcel	San Fernando Ranch		
No. 5	Property—Lot 24,		
	Tract 1,000	" "	\$ 36,500.00
Parcel	Lot 23, Tract		
No. 6.	1,000	" "	\$ 32,500.00
Parcel	Lot 2, Tract 1,000, and		
No. 7.	Lots 1 and 2, Tract		
	1335	" "	\$ 55,000.00

Parcel	Lots 4 & 5, Tract			
No.8.	1336	"	"	\$ 45,000.00

Parcel	Lots 6 & 7, Tract			
No. 9.	1336	"	"	\$ 45,000.00

Parcel	Following	Miscellane-		
No. 10.	ous Properties--One			
				Release Price \$ 15,000.00

A. Unsold lots in  
La Crescenta Oaks

B. Unsold parcels  
in Richland Farms

C. Two houses, at  
118 Windsor  
Road and 2866  
Canada Blvd.,  
both in Glendale.

RB J. E. Hatch )  
F. P. Newport)  
J. B. Gribble )

[Endorsed]: Filed Dec. 31, 1940, at ..... min. past 10  
o'clock A. M. Ernest R. Utley, Referee; Louise Rodgers,  
Clerk.

[Endorsed]: Filed Nov. 28, 1941. [78]

## SUPPLEMENTAL AGREEMENT

This Agreement, made and entered into this 31st day of August, 1937, by and between F. P. Newport Corporation, Ltd., a Delaware Corporation, with its principal place of business in the City of Los Angeles, State of California, hereinafter called the Bankrupt, H. F. Metcalf, as Trustee in Bankruptcy for the Estate of F. P. Newport Corporation, Ltd., a Bankrupt, and Security-First National Bank of Los Angeles, a National Banking Association, with its principal place of business in the City of Los Angeles, State of California, hereinafter called the Bank,

Witnesseth:

Recitals:

Under date of January 12, 1937, the Bankrupt, the Bank, and the then Receiver in Bankruptcy, H. F. Metcalf, entered into an agreement, providing certain terms and conditions under which the properties of the Bankrupt, held by the Bank, as security for the indebtedness of the Bankrupt, might be sold, and providing therein for the reduction in amount of the Bank's indebtedness, and other matters. Reference is hereby made to said agreement for the complete terms and conditions thereof.

The said Trustee in Bankruptcy, upon his appointment, petitioned the Bankruptcy Court to approve the contract and to authorize the same to be signed by him.

The said Bankruptcy Court has approved said contract, and authorized said Trustee to execute the same, conditioned upon certain modifications, hereinafter set forth, being made thereto. All the parties are willing to modify said contract in said particulars, hence this Agreement.



No interest on the sum of \$1,270,451.12, agreed to be accepted by the Bank under the Contract of January 12, 1937, has been paid since February 1, 1937. The Bank has advanced, since said date, to-wit: on the 16th day of April, 1937, the sum of \$9,120.06 for taxes on the property held by it in said [79] Trust No. D 7224, as security for its indebtedness.

The Agreement:

Interest to be added to  
principal up to August 1st.

It is agreed that interest on said principal sum of \$1,270,451.12, as provided in said agreement, up to August 1, 1937, together with the sum of \$9,120.06 advanced for taxes on April 16, 1937, with interest thereon at 4% per annum from the date of such advance, to August 1, 1937, shall be added to the said sum of \$1,270,451.12, and thereafter bear the same interest as said sum. It is agreed that the said sum, augmented by said above mentioned amounts, is as of August 1, 1937, the sum of \$1,304,918.77. Said sum shall bear interest at the rate of 4% per annum from August 1, 1937, payable as follows:

Interest payment

Extended

The first installment of said interest thereon shall be paid on or before March 7, 1938. Thereafter said interest shall be paid quarterly from March 7, 1938. If any installment of interest be not so paid, it shall bear like interest as the principal.

Principal payments  
extended.

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The principal of the Bank's indebtedness, in the agreed amount of \$1,304,918.77, shall be payable on the dates hereinafter specified, instead of on the dates specified in the said contract of January 12, 1937, and shall be paid as follows:

1. \$ 35,000.00 on or before March 7, 1938
2. \$ 65,000.00 on or before September 7, 1938
3. \$250,000.00 on or before September 7, 1939
4. \$150,000.00 on or before March 7, 1940
5. The balance of all indebtedness on or before September 7, 1940.

Repayment of Taxes  
from Special Fund.

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Such additional sums of money as the Bank, at its election, may advance after August 1, 1937, to pay taxes, assessments and improvement bonds against the property held by it in said Trust D 7224, as security for said indebtedness, as provided in said Declaration of Trust, together with interest thereon from [80] the date of such advance, at the rate of 4% per annum, compounded quarterly, shall be repaid to the Bank out of any money held by it in the "Special Fund" provided such fund shall have in it at all times sufficient money to assure the payment of the installment of interest falling due on March 7, 1938.

Provided the other parties hereto shall have complied with all of the other terms and conditions of said Declaration of Trust D 7224, and the said Agreement of January 12, 1937, as modified by this Agreement, the Bank

agrees that the failure of the Bankrupt or the Trustee in Bankruptcy to pay the installment of taxes for the fiscal year 1937-38, falling due in December of 1937, on the properties held by the Bank in said Trust D 7224, or should the Bank advance the money to pay such taxes, the failure to repay the same out of the "Special Fund" shall not constitute such default as to warrant immediate foreclosure of the said Declaration of Trust, and the failure to pay, or to repay the Bank, if the Bank shall advance them, the January installment of principal and interest on Improvement Bonds, a lien against any of the property held by the Bank in said Trust D 7224, shall not constitute such default as to warrant immediate foreclosure of said Declaration of Trust. And the Bankrupt, or the Trustee in Bankruptcy, shall not be called upon to pay said Tax and bond liens, or to repay the same to the Bank should it advance them, with interest as hereinabove provided, prior to the seventh day of March, 1938.

Receipts from Sales and Rentals  
to pass through hands of  
Trustee in Bankruptcy.

While the said Declaration of Trust No. 7224, and the contract of January 12, 1937, provide expressly that all moneys from Sales and Leases of Property in said Trust, shall be paid to and be received by the Bank, it is, nevertheless, agreed, pursuant to the Order of said Bankruptcy Court, that such payments shall pass through the hands of the Trustee in Bankruptcy, and be paid to said Trustee in Bankruptcy, and shall be by him forthwith paid over in full to the Bank to be distributed in accordance with the terms of the said Trust No. D 7224, and the [81] agreement of January 12, 1937, as modified hereby.

It is expressly understood and agreed that any such funds so passing through the hands of the Trustee in Bankruptcy, except as hereinafter provided, shall, while in his possession, be impressed by the lien of the Declaration of Trust securing the indebtedness owing to the Bank. Such funds shall be deposited by the Trustee in Bankruptcy in a separate fund, and not commingled with any other funds in the Bankrupt Estate, and shall be deemed earmarked for application on the Bank's indebtedness, and, except as in said agreement of January 12, 1937, provided, shall not become any part of the general assets of the Bankrupt Estate, nor charged with the payment of any of the expenses of administering said Bankrupt Estate, and nothing herein contained shall prevent the Court from fixing fees on the basis of all money passing through the hands of the Trustee.

No Modification of  
\$7,000 Income Provision.

Nothing herein contained, however, shall modify or change the provisions of said contract of January 12, 1937, under the heading of temporary collection of rents by the Trustee in Bankruptcy ~~by the terms of which certain rentals up to a maximum of \$7,000.00 for a limited period, are to be retained by the Trustee in Bankruptcy.~~

As provided for in said Agreement of January 12, 1937, it is agreed that all sales or leases of property shall be made by the Bank and the Trustee in Bankruptcy, subject to the approval of the Bankruptcy Court.

Referring to the second paragraph, on page seven of said agreement of January 12, 1937, entitled "Release Prices Credited Only on Principal", it is understood and agreed that the Trustee in Bankruptcy shall not be required, except by an order of this court, to make any payments to the Bank out of funds derived from properties not held by the Bank under its said Trust.

Other than as expressly modified by the terms of this [82] Agreement, the said Agreement of January 12, 1937, shall remain in full force and effect, and is hereby ratified and confirmed.

Contract as

Modified Affirmed

Hubert F. Laugharn was appointed Trustee in Bankruptcy by the Referee in Bankruptcy, and the District Judge made an order vacating said appointment, and adjudging that H. F. Metcalf had been elected Trustee, from which latter order an appeal to the United States Circuit Court of Appeals of the Ninth Circuit is now pending. Said Hubert F. Laugharn petitioned the Court for instructions as to whether or not he should sign the said contract and be bound thereby in the event of a decision confirming his appointment as Trustee and reversing the order of the District Judge, and the Court has instructed him to so sign and be so bound.

Therefore, said Hubert F. Laugharn, by his signing this agreement, becomes bound by all of the terms and conditions thereof, should he become Trustee of said Bankrupt Estate.

This contract shall be binding upon the parties hereto, their successors and assigns.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the day and year first hereinabove written.

(Corporate Seal)

F. P. NEWPORT CORPORATION, LTD.

By F. P. Newport  
President

By J. B. Gribble  
Secretary

H. F. Metcalf  
Trustee in Bankruptcy for the Creditors  
of F. P. Newport Corporation, Ltd., a  
corporation, Bankrupt.

(Seal)

SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES

By V. O. Wroolie  
Vice President

By Randall Boyd  
Assistant Secretary

Hubert F. Laugharn

[Endorsed]: Filed Dec. 31, 1940, at ..... Min. past  
10 o'clock A. M. Ernest R. Utley, Referee; Louise  
Rodgers, Clerk.

[Endorsed]: Filed Nov. 28, 1941. [83]



Exhibit "B".

[Title of District Court and Cause.]

STIPULATION RE MODIFICATION OF CONTRACT OR AGREEMENT OF JANUARY 12, 1937.

It Is Hereby Stipulated and Agreed by and between the undersigned that that certain contract or agreement dated the 12th day of January, 1937, made and entered into by and between F. P. Newport Corporation, Ltd., a Delaware corporation, bankrupt, H. F. Metcalf as Receiver for said F. P. Newport Corporation, Ltd., and Security-First National Bank of Los Angeles, a national banking association, (copy of which contract or agreement is attached to, marked Exhibit "A" and made part of the Findings and Order made and signed by the Honorable Ernest R. Utley, Referee in Bankruptcy herein, on the 13th day of August, 1937), may be and is hereby modified in the following respects and particulars only, to wit:

(1) That certain paragraph appearing on page 6 of said contract or agreement (pages 6 and 7 of said Exhibit "A"), reading as follows:

All properties not described in said Exhibit "A" shall be retained in said Trust and be leased or sold on terms and conditions satisfactory to the Bank and the Trustee in Bankruptcy, and shall be subject to the approval of the Bankruptcy Court.

Is Hereby Changed, Altered and Modified to Read as Follows :

All properties not described in said Exhibit "A" shall be retained in said Trust and be leased or sold on terms and conditions subject to the approval of the Bankruptcy Court. For the purposes of this agreement it is understood that no release prices are fixed on properties not described in said Exhibit "A".

(2) That certain paragraph appearing on page 6 of said contract or agreement (page 7 of said Exhibit "A") reading as follows: [84]

Any and all sales of said real property described in Exhibit "A" shall be on terms and conditions satisfactory to the Bank and the Trustee in Bankruptcy and shall be subject to the approval of the Bankruptcy Court.

Is Hereby Changed, Altered and Modified to Read as Follows :

Any and all sales of said real property described in Exhibit "A" shall be on terms and conditions satisfactory to and shall be subject to the approval of the Bankruptcy Court.

Dated this 14th day of October, 1937.

F. P. NEWPORT CORPORATION, LTD.

(Corporate Seal)

By F. P. NEWPORT

President

By J. B. GRIBBLE

Secretary

SECURITY-FIRST NATIONAL BANK OF  
LOS ANGELES

By C. W. CRAIG

Vice President

(Corporate Seal)

By RANDALL BOYD

Assistant Secretary

H. F. METCALF

As Trustee in Bankruptcy of F. P. Newport Corporation,  
Ltd.

HUBERT F. LAUGHARN

L. M. CAHILL

Counsel for F. P. Newport Corporation, Ltd.

W. C. SHELTON, GEORGE BURCH, JR. AND  
EARL E. MOSS

By W. C. SHELTON

Counsel for said Security-First National Bank of Los  
Angeles

ROBERT B. POWELL

Counsel for Hubert F. Laugharn

BAILIE, TURNER & LAKE

By NORMAN A. BAILIE

Counsel for H. F. Metcalf, Trustee.

Approved this 14th day of October, 1937.

PAUL J. McCORMICK

United States District Judge.

Endorsed]: Filed Dec. 31, 1940 at ..... min. past 10  
o'clock a. m. Ernest R. Utley, Referee; Louise Rodgers,  
Clerk.

[Endorsed]: Filed Nov. 28, 1941. [85]

[Title of District Court and Cause.]

STIPULATION RE MODIFICATION OF SUPPLEMENTAL AGREEMENT DATED AUGUST 31, 1937.

It Is Hereby Stipulated and Agreed by and between the undersigned that that certain "Supplemental Agreement" dated the 31st day of August, 1937, and made and entered into by and between F. P. Newport Corporation, Ltd., a Delaware Corporation, Bankrupt, H. F. Metcalf, as Trustee in Bankruptcy for the Estate of F. P. Newport Corporation, Ltd., a Bankrupt, and Security-First National Bank of Los Angeles, a National Banking Association, (copy of which "Supplemental Agreement" is attached to, marked Exhibit "C" and made a part of the Findings and Order made and signed by the Honorable Ernest R. Utley, Referee in Bankruptcy herein, on the 13th day of August, 1937), may be and is hereby modified in the following respects and particulars only, to wit:

Those certain paragraphs appearing on pages 3 and 4 of said "Supplemental Agreement" and reading as follows:

"While the said Declaration of Trust No. 7224, and the contract of January 12, 1937, provide expressly that all moneys from Sales and Leases of Property in said Trust, shall be paid to and be received by the Bank, it is, nevertheless, agreed, pursuant to the Order of said Bankruptcy Court, that such payments shall pass through the hands of the Trustee in Bankruptcy, and be paid to said Trustee in Bankruptcy, and shall be by him forthwith paid over in full to the Bank to be distributed in accordance with the terms of the said Trust No. D 7224, and the agreement of January 12, 1937, as modified hereby.

"It is expressly understood and agreed that any such funds so passing through the hands of the Trustee in Bankruptcy, except as hereinafter provided, shall, while in his possession, be impressed by the lien of the Declaration of Trust securing the indebtedness owing to the Bank. Such funds shall be deposited by the Trustee [86] in Bankruptcy in a separate fund, and not commingled with any other funds in the Bankrupt Estate, and shall be deemed earmarked for application on the Bank's indebtedness, and, except as in said agreement of January 12, 1937, provided, shall not become any part of the general assets of the Bankrupt Estate, nor charged with the payment of any of the expenses of administering said Bankrupt Estate, and nothing herein contained shall prevent the Court from fixing fees on the basis of all money passing through the hands of the Trustee."

Are Hereby Changed, Altered and Modified to Read as Follows:

"While the said Declaration of Trust No. D 7224 and the contract of January 12, 1937, provide expressly that all moneys from Sales and Leases of Property in said Trust shall be paid to and be received by the Bank, it is, nevertheless, agreed, in order to comply with the bankruptcy law requiring that all bankruptcy funds be accounted for by the Trustee and be disbursed by him only upon checks or warrants countersigned by the Referee, that all such moneys shall be paid to said Trustee in Bankruptcy, and, until the indebtedness due the Bank has been paid, shall be by him forthwith paid over in full to the Bank, to be distributed in accordance with the terms of said Trust No. D 7224 and the agreement of January 12, 1937, as modified hereby.

“Recognizing that the Bank has a prior right to the moneys in the preceding paragraph mentioned until the indebtedness due it has been paid, it is therefore expressly understood and agreed that such funds or money so paid to and received by the said Trustee in Bankruptcy from Sales or Leases or other disposition of property under said Trust shall, until the indebtedness due the Bank has been paid and except as hereinafter provided, be, while in his possession, impressed with the lien of the Declaration of Trust securing the indebtedness owing to the Bank, and such funds or moneys shall be deposited by the Trustee in Bankruptcy in a separate bank account and not commingled with any other funds of the Bankrupt Estate, and shall be deemed earmarked for application on the Bank’s indebtedness as provided in said agreement of January 12, 1937, and this supplement thereto, and except as in said agreement and said supplement provided, shall not, until the indebtedness due the Bank has been paid, become any part of the general assets of the Bankrupt Estate. No provision of said agreement of January 12, 1937, or this supplement thereto is made or entered into, directly or indirectly, for the purpose of fixing the amount of the fees or other compensation to be paid to any party in interest or any attorney of any party in interest in this bankruptcy proceeding, for services rendered in connection therewith or otherwise, and the fixing and determination of any fees or compensation to be paid to anyone whomsoever from the assets of this Bankrupt Estate, is, in accordance with the law, left entirely to the determination of the court having jurisdiction of this bankruptcy proceeding, unaffected by any provision term or condition, express or implied,



of said contract of January 12, 1937, or of this supplement thereto." [87]

Dated this ..... day of October, 1937.

F. P. NEWPORT CORPORATION, LTD.

(Corporate Seal) By F. P. NEWPORT  
President

By J. B. GRIBBLE  
Secretary

SECURITY-FIRST NATIONAL BANK OF  
LOS ANGELES

By C. W. CRAIG  
Vice President

(Corporate Seal) By R. T. ADAMS  
Assistant Secretary

H. F. METCALF

As Trustee in Bankruptcy of F. P. Newport Corporation,  
Ltd.

HUBERT F. LAUGHARN

L. M. CAHILL

Counsel for F. P. Newport Corporation, Ltd.

W. C. SHELTON, GEORGE BURCH, JR. AND  
EARL E. MOSS

By W. C. SHELTON

Counsel for Security-First National Bank of Los  
Angeles

ROBERT B. POWELL

Counsel for Hubert F. Laugharn

BAILIE, TURNER & LAKE

By NORMAN A. BAILIE

Counsel for H. F. Metcalf, Trustee in Bankruptcy.

Approved this 29th day of October, 1937.

PAUL J. McCORMICK

United States District Judge.

[Endorsed]: Filed Oct. 29, 1937 [88]

## [TRUSTEE'S EXHIBIT C—BY REFERENCE]

## OIL AND GAS LEASE.

This indenture, Made and entered into this 14th day of January, 1938, by and between Security-First National Bank of Los Angeles, a national banking association, as Trustee under its Trust No. D-7224, F. P. Newport Corporation, Ltd., a corporation, Bankrupt, and the Trustee in Bankruptcy of said F. P. Newport Corporation, Ltd., Bankrupt, Parties of the First Part and Lessors, and Universal Consolidated Oil Company, a California corporation, Party of the Second Part and Lessee,

Witnesseth:

## Granting Clause.

That for and in consideration of \$10.00, lawful money of the United States of America, to the Lessors in hand paid, and of other valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained by the Lessee to be kept and performed, the Lessors have leased, let and demised, and by these presents do lease, let and demise unto the Lessee, its successors and assigns, those certain lots, pieces or parcels of real property in the Rancho Los Cerritos, situate in the City of Long Beach, County of Los Angeles, State of California, more particularly described as follows:

Parcel 1: Beginning at the most Southwesterly corner of the land described in the [89] deed to the Title Insurance and Trust Company, recorded in Book 5577 Page 105 of Deeds, Records of said County, in the Northwesterly line of Channel No. 3, Long Beach Harbor; thence along said Northwesterly line South 64° 42' 30" West 250 feet; thence

North 19° 42' 30" East 738.08 feet; thence North 64° 42' 30" East 250 feet to the most Northwestern corner of the land described in said deed to the Title Insurance and Trust Company; thence along the Northwestern line of said land so described, South 19° 42' 30" West 738.08 feet to the point of beginning.

Parcel 2. Beginning at the most Southeasterly corner of the land described in the above mentioned deed to the Title Insurance and Trust Company, in the Northwestern line of Channel No. 3 of Long Beach Harbor; thence along the Southeasterly line of the land described in said deed North 19° 42' 30" East, 738.08 feet; thence North 64° 42' 30" East 500 feet; thence South 19° 42' 30" West 738.08 feet to a point in said Northwestern line of Channel No. 3; thence along said Northwestern line South 64° 42' 30" West 500 feet to the point of beginning.

Note: In Book 1 Page 10 of the County Recorder's Assessment Maps, is the record of a map filed February 9th, 1917, made by the City Engineer of the City of Long Beach for local assessment purposes only, upon which map [90] the above described property is designated as Lots 18, 20 and 21.

To have and to hold the same for the purposes and term hereinafter provided therefor, subject to any valid Municipal, State and/or Federal rights, if any there be and subject also to conditions, reservations, restrictions, rights and rights of way, if any there be, of record, and upon the following covenants, terms and conditions:

### Duration of Lease.

1. Unless sooner terminated as elsewhere herein provided, this lease shall continue for a period of 30 days from and after the date of the delivery hereof, and so long thereafter as actual drilling on said premises is being diligently conducted or deferred under provisions herein elsewhere contained, and should production of one or more of the products specifically mentioned in the next succeeding paragraph result from said drilling operations, then this lease, unless sooner terminated as elsewhere herein provided, shall remain in full force so long thereafter as one or more of said products are produced from said demised premises in commercially paying quantities, not to exceed 25 years from date hereof.

### Purpose of Lease and Rights of Lessee.

2. The Lessee shall have the sole and exclusive right, (unless otherwise expressly provided herein to the contrary), of prospecting the demised premises and drilling for, producing, extracting, treating, removing and [91] marketing oil, gas, natural gasoline and other hydrocarbon substances therefrom, and to establish and maintain on said premises such tanks, boilers, houses, engines and other apparatus and equipment, power lines, pipe lines, roads and other appurtenances as may be necessary or convenient in the production, treatment, storage and/or transportation of any and all said products from and on said property. The Lessee shall have the right during the life of this lease to drill for and develop such water on any part of the demised premises as it may require in its operations hereunder, provided the Lessors possess the right so to do; provided, however, that it is understood by the Lessee that a portion of said demised premises is now being occupied by John Harvey, doing business un-

der the firm name and style of De Luxe Water Taxi Co., under one or more leases, which said lease or leases, held by said John Harvey, the Lessors shall be under no obligation to terminate until such time as the Lessee has drilled and completed at least one well on said property which produces oil and/or gas in commercially paying quantities, and until such occupancy by the said John Harvey, his successors in interest or assigns, shall substantially interfere with the operations of the Lessee hereunder. It is further understood by the Lessee and the Lessors warrant that the portions of said premises so held by said John Harvey are by him held under a month to month lease or leases, which are subject to termination upon the notice provided by law therefor. [92]

#### Drilling Requirements.

3. The Lessee agrees to commence the actual drilling of a well on the demised premises within 30 days after date of the delivery hereof, and to diligently prosecute the same until oil and/or gas be found in commercially paying quantities, or to a depth at which further drilling would, in the opinion of a competent and impartial geologist, be unprofitable; provided, however, that the Lessee shall drill said first well to and so far into the "terminal" sand, zone or horizon as may reasonably be expected to secure therefrom the most prolific production of oil. If said first well or any subsequent well prior to completion of a paying well be abandoned for mechanical or other reasons, this lease shall remain in force and effect if the actual drilling of a new well is begun within 30 days from the date of such abandonment, and the drilling thereof is diligently prosecuted to completion or abandonment. If prior to the completion of said first well there shall have been completed within 330 feet of the exterior boundary line of any of the demised premises a well which pro-



duces oil and/or gas in commercially paying quantities, then and in such event the Lessee agrees to promptly commence the drilling of a second well and to diligently prosecute the drilling thereof concurrently with the drilling of said first well, until such second well shall have been completed as a commercial producer or until it shall have been drilled to a depth at which further drilling would, in the opinion of a competent and impartial geologist, be unprofitable. If at the time of the abandonment of any well the Lessee is already engaged in the drilling of one or more other wells upon the demised premises, the foregoing requirement for the commencement of a new well within 30 days after the date of such abandonment shall not apply so long as the drilling of any such additional well or wells shall be in good faith diligently continued.

#### Subsequent Wells.

It is further understood and agreed that subject to any rules and regulations of any Federal, State, Municipal or other governmental agency or other matters or conditions beyond the control of the Lessee, one well shall be drilled to completion and production for each one acre of land covered hereby as follows: Such wells, (unless the Lessee shall elect or be required hereunder to accelerate its drilling operations), shall be drilled in succession; the drilling of each successive well shall be commenced at an interval of not more than 30 days after the next preceding well has been completed and placed on production. Such drilling of said wells shall continue until a number equal to one well for each acre of land covered hereby has been drilled and completed as a commercial producer.



### Full Development Clause.

Unless excused from so doing under Paragraph 5 hereof, (anything herein elsewhere to the contrary notwithstanding), the Lessee agrees, while operating [94] hereunder, to properly produce all available oil, gas and other hydrocarbon substances from the demised premises, (or any portion thereof held by the Lessee), and to properly exploit, develop and protect the minerals and mineral rights in the demised premises, (or in any portion thereof held by the Lessee), subject, in each instance, to legal restrictions and to any regulations imposed by governmental authority or any other matters over which the Lessee has no control. For a failure of the Lessee, when reasonably necessary and proper so to do, to develop any known commercially profitable zone or stratum the Lessors may forfeit the right of the Lessee to develop or produce any such zone or stratum or any zone or stratum below any depth from which the Lessee may then be producing on said premises, or the Lessors may pursue any other remedy given them by law hereunder.

### No Slant Drilling.

The Lessee also agrees to drill all wells within an area representing the superficial area of the demised premises from the surface thereof down to the depth of said wells, and not to trespass upon the lands of adjoining or neighboring owners, and to make the necessary surveys to carry out the provisions of this clause, which surveys shall be open to the inspection of the Lessors and their authorized representatives; and the Lessee agrees to indemnify and protect the Lessors and each of them against any and all claims and refunds for all oil, gas and other hydrocarbon substances se- [95] cured and produced from any well drilled hereunder not extending down wholly beneath said superficial area.

## Limitation on Rights to Deepen, etc.

4. The Lessee shall have the right at all times during the continuance of this lease to operate, deepen. (if the right to deepen has not been forfeited). redrill and maintain all producing oil and/or gas wells upon the demised premises; provided, however, that the Lessee shall not, without the written consent of the Lessors, have the right to deepen any existing well or to drill any new well after a forfeiture has occurred because of the failure of the Lessee to fulfill any of the drilling obligations hereunder, but this proviso shall apply only to property affected by such forfeiture and to the wells thereon situate or intended to be drilled thereon.

## Suspension of Operations.

5. Drilling and/or producing and/or repairing operations may be delayed, suspended or curtailed on the demised premises only in the event that they are prevented by the elements, accidents, strikes, lockouts, delays in transportation or interference by Municipal, County, State or Federal action, or the action of other governmental officers or bodies or other causes beyond the reasonable control of the Lessee, or when there is no market for the oil; provided, however, that the failure of the Lessee to obtain any permit or permits legally required [96] as a condition precedent to the drilling of any such well or wells shall not operate to delay, suspend or curtail any such operation where the failure to obtain any such permit is the result of the neglect of the Lessee to in good faith promptly apply therefor, or where any refusal to grant such a permit is based upon any prior acts or omissions of the Lessee; and, provided, further, that in no event shall any failure, from whatever source, to obtain any such necessary permit or permits extend the time for the

commencement of the actual drilling of the first well beyond 120 days from the date hereof.

### Conservation Agreements.

The Lessee, if and when legally required so to do, is hereby authorized to enter into conservation and curtailment agreements with other operators for the purpose of preventing waste or for the conservation of oil and/or gas; provided that any such legally required agreed curtailment, unless otherwise provided by law, shall be at no greater pro rata percentage per well or location on demised premises than that on offset acreage where offset wells are producing or drilling; provided, further, however, that no such legally required agreement, unless provision therefor be made mandatory by law, shall require or permit the Lessee to suspend or curtail any drilling or production operations on any well which offsets any well on adjacent premises drilled or being drilled within 330 feet of the boundary line of the demised premises, where the drilling [97] or production of the well so offset is not likewise being suspended or curtailed.

### Free Use of Fuel and Water.

6. The Lessee shall be entitled to use, without payment of royalty, so much of the water, (if the right to develop and produce water be available to the Lessee hereunder), oil and/or gas developed and produced by the Lessee on the demised premises, as may be required by the Lessee in the operation of said premises.

### Royalty on Oil.

7. The Lessee shall pay said Trustee in Bankruptcy, his successors or assigns, on or before the 20th day of each month, as royalty and rental, a sum equal to thirty-five per cent (35%) of the full market price on the demised

premises of all oil produced and saved by it from said premises during the last preceding calendar month, or (as hereinafter provided) in lieu thereof, thirty-five per cent (35%) of the oil so produced and saved. Said market price shall be the full market price contracted for by the Lessee and shall not be less than the available posted market price offered by the major oil purchasing companies for oil of like gravity and quality on the premises where produced in the district in which the demised premises are located on the date of delivery of the oil from the Lessee's gauge tanks, unless clean oil be unsaleable at such price, in which event the Lessee shall so notify Lessors of such condition, and pending the [98] continuance of such condition, the Lessee shall sell such clean oil at the best available price obtainable therefor, unless the Lessors elect to take in kind, and the price contracted therefor by the Lessee shall be the price used in settlement with the Lessors on account of the oil so marketed.

#### Dehydration.

In the event the oil requires treatment or dehydration to render it, marketable as clean oil, the Lessee shall so treat or dehydrate the same or cause the same to be treated or dehydrated, and the Lessee is hereby authorized to deduct from the amount due the Lessors a sum equal to thirty-five per cent (35%) of the actual cost of transportation to or from the treating plant, if same be located off of the demised premises, and thirty-five per cent (35%) of the actual cost of such treating or dehydrating, exclusive of any plant or overhead cost, not to exceed four cents per barrel for such treating and/or dehydrating.

### Royalty in Kind.

At Lessors' option, exercised not oftener than four times in any one calendar year, upon thirty days' previous written notice, Lessee shall, until notified in writing to the contrary, deliver into Lessors' tanks on the demised premises, free of cost, Lessors' royalty oil. No royalty shall be due the Lessors for or on account of any oil lost through evaporation, leakage or otherwise, not due to the negligence of the Lessee, prior to the [99] marketing of the same or delivery to the Lessors, if royalty oil is being taken in kind.

### Royalty on Gas.

8. The Lessee shall be under no obligation to sell or store gas or water, nor to manufacture gasoline or other products from natural gas; provided, however, that if the Lessee can contract the manufacture of gasoline and/or other products from natural gas on a commercially profitable basis, the Lessee will be required so to do, unless the Lessee elects to manufacture the same itself. If any gas or any water is sold, the Lessee shall pay to the said Trustee in Bankruptcy, his successors or assigns, a sum equal to thirty-five per cent (35%) of the proceeds of the sale of such gas or water, after deducting any actual cost (exclusive of overhead) of transporting and selling the same. If casinghead gasoline or other products be manufactured or extracted on the premises or elsewhere by the Lessee or by others under a contract or lease on a royalty basis from gas produced from any well or wells on the demised premises, such products shall be marketed according to the prevailing usage and custom of marketing such products and at the best price obtainable therefor consistent with sound business principles, and the Lessee shall deduct from the



gross royalty or proceeds received by the Lessee from the sale of such products any actual cost (exclusive of overhead) to the Lessee of extracting, (if it extract such products), transporting and selling the same, and shall pay to the said Trustee [100] in Bankruptcy, his successors or assigns, a sum equal to thirty-five per cent (35%) of the remainder of such royalty or proceeds.

#### Taxes on Personalty.

9. The Lessee shall well and truly pay before delinquency all taxes and assessments levied or assessed against the improvements, machinery, equipment or other property, real or personal, placed or caused to be placed by it upon the demised premises, including all oil stored thereon, exclusive of Lessors' royalty oil.

#### Other Taxes.

If the assessed value of the demised premises, (exclusive of the improvements thereon), be hereafter increased over the assessed valuation as fixed for the fiscal year 1936-37, by reason of the discovery of oil and/or gas thereon, the Lessee shall pay sixty-five per cent (65%) of all taxes levied or assessed upon such increase above the assessed valuation for said fiscal year 1936-37, and the Lessors shall pay the balance of the taxes and/or assessments on said lands; provided, however, that if under the present laws or any laws which may be hereafter enacted, this lease and/or the leasehold estate created hereby and/or the oil, gas, minerals or mineral rights in said premises are assessed separately and apart from said land, under any name or designation whatsoever, and/or if any tax be levied or assessed which is based upon the quantity of the production of oil and/or gas from said prem- [101] ises, whether assessed or levied to or against the Lessors or Lessee, or if any severance



charge be levied, assessed or made, then sixty-five per cent (65%) of the charges and/or taxes so levied, assessed or made shall be paid by the Lessee and thirty-five per cent (35%) thereof shall be paid by the Lessors.

#### Failure of Lessors to Pay Taxes.

Upon the failure of the Lessors to pay their proportion of any of said taxes, the Lessee is hereby authorized to pay the same, and the Lessors agree to repay the Lessee the amount so paid, with interest thereon at the rate of 7% per annum from the date of such payment by the Lessee until so repaid.

#### Rights if Lessee Pays Lessors' Taxes.

In case of any such payment by the Lessee it may deliver to the Lessors an itemized statement of all taxes so paid for the Lessors. in which event said Lessee may deduct from the next royalty or royalties payable hereunder an amount sufficient to reimburse the Lessee for the amount so paid.

#### Rights if Lessors Pay Lessee's Taxes.

Upon the failure of the Lessee to pay its proportion of said taxes, the Lessors or any one or more of them may advance the same, and the Lessee agrees to repay same to the Lessor or Lessors so making said advancement, together with interest [102] thereon at the rate of 7% per annum from the date of such advancement until repaid.

The obligations of the Lessors under this Paragraph 9 shall not be binding upon any trustee lessor except to the extent that such trustee lessor may have in his possession monies sufficient to meet such obligations which may be available for that purpose, nor shall any such

obligations be binding upon any such trustee lessor in his or its individual capacity.

#### Royalty, Where and How Paid.

10. All payments of rentals and royalties due hereunder shall be made by the Lessee's check, accompanied by a statement showing in detail how the amount was arrived at, mailed, postage prepaid, or delivered personally on or before the day such payment is due, to said Trustee in Bankruptcy at the address of such Trustee, at Los Angeles, California, until further notified by said Trustee in Bankruptcy. No change in the ownership of said demised premises or in any part thereof or in the rentals or royalties or any part thereof shall affect or bind the Lessee until the purchaser thereof shall exhibit to the Lessee the original instrument of conveyance and furnish to the Lessee a duly certified copy thereof. Such evidence of ownership must be supplied at least thirty days before the same is to take effect, (unless otherwise consented to by the Lessee), otherwise payment of rentals to [103] the purchaser's predecessor in title shall bind such purchaser.

#### Paying Quantities.

11. The term "paying quantities" and similar expressions wherever used herein are hereby defined to mean such quantities of oil and/or gas as will justify the Lessee in continuing to operate the well or wells from which the same may be produced.

#### Manner of Operations and Records Thereof.

12. The Lessee shall carry on all operations hereunder diligently, with adequate equipment, and in a careful workmanlike manner, and in accordance with all valid laws, rules and regulations enacted by any au-

thority having jurisdiction over such operations, and shall keep full and true records of the operations and productions, sales and shipments of products from said property and all other records necessary and proper to enable it to, (and it shall), fully and properly account hereunder, and all such records and the operations on said demised premises shall be at all reasonable times open to the inspection of the Lessors or any one or more of them, (including all information filed with the State Oil and Gas Supervisor by the Lessee, its successors or assigns, consent to the inspection of which is hereby expressly granted by the Lessee). Whenever requested by the Lessors or by any one or more of them in writing, the Lessee [104] shall furnish to them a copy of the log of any well drilled on said demised premises.

#### Basis of Accounting by Lessee.

All accountings by the Lessee to the Lessors for royalty and rental from oil produced hereunder shall be based upon tests made of the oil after it has been cleaned and dehydrated, and which tests must be by some approved modern method commonly in use at the time the tests, respectively, are made, and which said tests and the manner of making the same must be such as to obtain the most accurate results reasonably obtainable, and it shall be the duty of the Lessee in marketing such oil to observe and enforce these requirements; and, in contracting for the processing of natural gas, it shall be the duty of the Lessee to see that it gets a like or greater percentage of other products (or of the proceeds therefrom) extracted and saved from the natural gas as it does of the gasoline (or of the proceeds therefrom) extracted and saved from the natural gas.

### Use of Premises by Lessors.

13. The Lessors and each of them shall have the right to gauge all production hereunder and to use the surface of the demised premises, (where they have the right now to use the same, respectively), for any purpose or purposes not inconsistent with the rights of the Lessee hereunder, and to such an extent as will not unreasonably interfere with such rights of the Lessee hereunder, including the right [105] to develop or to cause to be developed any sand or zone in the demised premises, the right to develop which has been lost by the Lessee. The Lessee agrees to conduct its operations hereunder so as to interfere as little with such use by the Lessors, respectively, as is consistent with the economical operation of the property for the development and production of oil, gas and other hydrocarbon substances therefrom and thereon.

### Removal of Equipment.

14. The Lessee shall have, within the time elsewhere herein provided therefor, the right to remove any houses, tanks, pipe lines, structures, casing or other equipment, appurtenances or appliances of any kind brought by it upon the said demised premises, whether affixed to the soil or not; provided, however, that in case of the abandonment, for reasons other than mechanical difficulties, of any producing oil and/or gas or water well in which the Lessee has landed casing, if the owner or owners of the demised premises on which any such well shall be located shall desire to retain the same, he or they shall notify the Lessee in writing to that effect within ten days after receiving written notice from the Lessee of its intention to abandon and remove casing, and thereupon the Lessee shall leave in the well such of said casing

as any such owner or owners shall require, and such owner or owners shall forthwith pay to the Lessee fifty per cent of the cost to the Lessee of such casing delivered on the ground. [106]

#### Forfeiture.

15. In the event of any breach of any of the covenants, terms or conditions of this lease by the Lessee, other than one of those mentioned in Paragraph 29 hereof, and the failure of the Lessee to commence in good faith to remedy the same within 30 days after written notice from the owner or owners of the demised premises so to do, or if the Lessee shall fail to diligently prosecute its efforts until such default has been fully remedied, then, at the option of such owner or owners, this lease shall forthwith cease and determine, and all rights of the Lessee herein and hereunder shall be at an end; provided, however, that notwithstanding any such forfeiture of this lease for any cause other than one of those mentioned in subparagraphs (a) and (b) of Paragraph 29 hereof the Lessee shall have the right to retain any and all wells then being drilled or which may then be producing oil and/or gas in paying quantities, together with the aforesaid easements and appurtenances of said wells, in so far as reasonably necessary for the operation thereof, and sufficient land surrounding each well for the operation thereof. The land so retained shall be subject to all of the terms and conditions of this lease.

#### Litigation as to Royalty—Delinquent Liens.

16. Should suit be brought involving the ownership of any royalties accruing hereunder or the validity of this lease or the foreclosure of a lien [107] or charge against the fee of any lot, piece or parcel of land included in the demised premises, or said rents and royalties, the Lessee



shall not be relieved of the obligation to make any such payment of rents and royalties, but such payments shall be made to a bank to be selected by the Lessors, their successors in interest or assigns; and as to the amount in controversy only, shall be held in escrow by such bank pending the determination of such suit, and shall upon the final determination thereof be paid over to the party or parties who shall be determined to be entitled thereto.

#### Rezoning and Permits.

17. That as to all or any part of the lands covered by and subject to the terms of this lease which may at the date hereof or which may hereafter require a permit or zoning to permit any authorized operation of the Lessee hereunder, the Lessors of the lands so requiring such permit or rezoning and the Lessee agree, but without expense to the Lessors, to sign and to cause to be delivered to the legally constituted authorities of the proper Municipal or other political subdivision the necessary petitions, documents, maps and/or other requisite papers requesting, soliciting and praying for such permit or the rezoning of such lands so as to permit such operations thereon; provided, however, that nothing herein contained shall obligate the Lessors or any one or more of them to sign any petition, document, map or other paper where the signing thereof would [108] have the effect of obligating such signer to pay any money or moneys or to perform any other act which might affect such signer financially, or which might operate as a transfer or relinquishment of any right or interest of such signer hereunder, or as a transfer or conveyance of any interest of such signer in said property or in any products therefrom.



**Lessee Liable for Damages and Negligence.**

18. The Lessee shall during the term of this lease be responsible to the Lessors, respectively, and to all other persons or corporations for all damages caused by its negligence and/or by its operations hereunder, and shall indemnify and defend the Lessors and each of them against any and all such damages or claim therefor on the part of third persons; and, if the Lessee shall engage in any operation or operations hereunder which may have the effect of placing a legal liability upon the Lessors, the Lessee shall, at its own cost and expense, take out and maintain all insurance reasonably necessary to protect and indemnify the Lessors and each of them hereunder, and shall furnish to the Lessors appropriate evidence that the Lessee has complied with the requirement to take out and maintain such insurance.

**Notices.**

19. Any notice from the Lessors or any of them to the Lessee may be given by serving such notice personally upon the Lessee or by sending the same by registered mail addressed to the Lessee at 417 [109] South Hill Street, Los Angeles, California, and any notice from the Lessee to the Lessors or to any one or more of them may be given by sending the same by registered mail addressed to said Lessors at their respective places of business in the City of Los Angeles, California. Any party hereto may at any time by written notice to the others change the address to which notices shall thereafter be sent by the person or persons desiring to send such notice.

**Lessee to Keep Premises Free of Liens.**

20. All materials furnished or work done on said demised premises by the Lessee shall be at the Lessee's

sole cost and expense, and the Lessee agrees to protect said demised premises and each piece and parcel thereof and the respective Lessors from all claims of contractors, laborers and materialmen, hereby consenting that the Lessors may post and keep posted on the demised premises such notices as may be desired in order to protect said lands and premises against mechanics' or other liens resulting from the operations of the Lessee hereunder.

### Surrender of Premises.

21. Upon the expiration of this lease or its sooner termination in whole or in part, the Lessee shall surrender the possession of the demised premises or the affected portion thereof to the Lessors, and shall deliver or cause to be delivered to the Lessors a good and sufficient reconveyance thereof. Within 30 days after such expiration or termina- [110] tion, the Lessee shall, (subject to the rights and privileges granted the Lessee and the Lessors, respectively, hereunder), remove from such premises as to which this lease is so terminated, all of its rigs, machinery and other property, and shall fill all sump holes and other excavations made by it.

### Right to Quitclaim.

At any time after the Lessee has drilled the first or any subsequent well upon said demised premises to the depth required by Paragraph 3 hereof, if such well or wells be incapable of producing in paying quantities, the Lessee may quitclaim the demised premises, or the parcel thereof upon which such well may have been drilled to the Lessors, and thereafter the obligations of the Lessee hereunder shall cease as to the premises or parcel so quitclaimed: provided further, however, that the quitclaiming of either of said parcels without the other shall

have the same effect and be accompanied by the same results as if the same had been forfeited under Paragraph 15 hereof, but the quitclaiming of the entire premises, whether accomplished by one or two deeds and whether accomplished at the same or different times, shall operate to deprive the Lessee of all of its rights hereunder, except the right to remove its equipment as provided in Paragraph 14 hereof, subject to the rights of the owner or owners as in said last mentioned paragraph set forth.

#### Arbitration by Geologists.

The geologist mentioned in said Paragraph 3 hereof shall be a geologist mutually agreed upon in [111] writing by the parties hereto. If they cannot so agree the Lessors shall select one geologist, the Lessee another, and if the two so selected cannot agree, they are to select a third, whose opinion, when expressed in writing, shall be binding on all parties hereto.

#### Assignment.

22. It is agreed by and between all of the parties hereto that the Lessee shall have no right to (and it covenants that it will not), without the written consent of the Lessors first had and obtained, assign or transfer this lease or any interest therein or thereunder, nor sublet the demised premises or any part thereof; provided, however, that nothing in this paragraph contained shall operate to deprive the Lessee of the absolute right to assign or transfer this lease in its entirety in the event (a) that the Lessee consolidates with another corporation, or (b) in the event it reorganizes, or (c) in the event it make a bonafide transfer of a majority of its assets; but any such assignment or transfer must conform to the requirements hereinafter in this paragraph contained. It

is hereby further agreed that in the event this Lease shall be assigned by the Lessee with the consent of the Lessors as to a part or as to parts of the demised premises, and the assignee or assignees of such part or parts shall default in the performance of any covenant of this lease as applied to such portion so assigned, such default shall not operate to defeat or affect this lease in so far [112] as it covers the part of the demised premises retained by the said Lessee or any assignee thereof upon which there is no default. Any transfer or assignment of this lease or of any interest herein or hereunder or of the leasehold estate or any part thereof or of any interest therein, or the subleasing of said demised premises or of any part thereof, or any agreement for the joint development or operation of said demised premises or any part thereof, whether made by the Lessee or by anyone who may have succeeded to all or some of the rights of the Lessee hereunder, shall operate at the option of the Lessors to entitle the Lessors to terminate this lease and to re-enter the premises, unless such assignment, transfer, sublease or agreement is in writing and contains (1) the full and correct name and residence address of the assignee, transferee, sublessee or joint operator, and (2) a covenant on the part of such assignee, transferee, sublessee or joint operator to the effect that such assignee, transferee, sublessee or joint operator is bound by all rights granted by the Lessee to the Lessors herein and assumes for the benefit of the Lessors and will faithfully keep, observe and perform each and every covenant, term and condition in this lease contained on the part of the Lessee in the future to be observed, kept or performed, in so far as the same may apply or relate to any interest, property or estate acquired by said assignee, transferee, sublessee or joint operator under any such assignment,

transfer, sublease or agreement; and unless said in- [113] strument or a duplicate thereof be subscribed by said assignee, transferee, sublessee or joint operator and be duly acknowledged by him and certified so as to entitle the same to recordation, and be delivered to said Lessors in person or by United States registered mail in the manner herein required for the service of any notice upon the Lessors, within ten days next following the delivery of any such assignment, transfer, sublease or agreement. Such name, address, assumption and covenant may at the option of the assignee, transferee, sublessee or joint operator be contained in a separate instrument to be executed concurrently with such assignment, transfer, sublease or agreement, acknowledged, certified and delivered to said Lessors within the time and in the manner above provided. If such assignment, transfer, sublease or agreement shall pertain to only a portion of the leasehold estate or of an interest therein, as hereinbefore provided, any right of forfeiture under this provision shall pertain only to such portion.

#### Release of Lessee in Case of Assignment.

In the event of the making of any such assignment, transfer or sublease, as herein provided for, and the delivery to the Lessors of the instrument containing such information and covenant, together with a copy of any other instrument or instruments by or through which any such assignment, transfer or sublease may have been accomplished, if the Lessors shall have approved in writing of the making [114] of such assignment, transfer or sublease, the Lessee shall thereupon be released and relieved of any obligation hereunder thereafter maturing, in so far as the same may relate or apply to any interest, property or estate acquired by such assignee, transferee



or sublessee under any such assignment, transfer or sublease.

#### Successors and Assigns.

23. This lease and all of its terms, conditions, covenants and stipulations, unless otherwise provided herein, shall extend to and be binding upon the successors and assigns of the Lessee and upon the successors in interest and assigns of the respective Lessors.

#### Use of Water Front Property.

24. Lessee covenants not to construct upon the surface of the demised premises within 150 feet of said Channel No. 3 any building, tanks or other structures, and agrees not to occupy the surface of said premises within 150 feet of said Channel No. 3 for any purpose, and that it will at all times keep open and unobstructed on each of said parcels a right of way not less than twenty-four feet in width extending from the nearest public street to said 150 foot strip lying along said Channel No. 3, which said rights of way shall be at all times available to the said Lessors and to their respective licensees, successors in interest and assigns, for ingress to and egress from said respective strips of land; provided, [115] however, that the Lessee shall not be required to surface, pave or repair said rights of way, (unless such repair be necessitated by its acts), nor shall it be liable for any injury which may result to any person while passing or attempting to pass over either of said rights of way and which may have been proximately caused by any defect in or disrepair of such right of way which it was not obligated to remedy or repair as aforesaid.

#### Bonus.

25. In consideration of the rights in this lease, granted to the Lessee, the Lessee agrees to pay to the Lessors



(in addition to any cash bonus paid for this lease), a bonus of \$25,000.00, in addition to all royalties hereinabove provided for, payable out of ten per cent (10%) of the gross production first obtained from the demised premises.

#### Covenants Run With Land.

26. All covenants herein contained pertaining to the payment of rents and royalties shall be deemed to be covenants running with the land and shall be binding upon and shall inure to the benefit of the owner or owners of such lands until all of the rights of the Lessee hereunder are finally terminated.

#### Lessors Acquire No Additional Interest.

27. Anything elsewhere herein contained to the contrary notwithstanding, it is expressly understood and agreed by and between the Lessors, (and so understood by the Lessee), that nothing herein con- [116] tained shall operate to convey or transfer to any Lessor any greater right or interest in the demised premises than he or it may have had prior to the execution hereof, neither is it the intention of any Lessor herein to assume or become liable for the performance or the lack of performance of any duty or obligation of any other Lessor hereunder.

#### Change of Address.

28. The Lessee covenants and agrees that it will, in the event it changes its place of business or mailing address, promptly notify the Lessors thereof in writing. The Lessors covenant and agree that in the event they change their respective places of business or mailing addresses at any time while interested hereunder they will give like notice thereof to the Lessee.

**Forfeiture for Failure to Drill or Pay Royalty.**

29. (a) If the actual drilling of the first well herein provided for has not been commenced within the time herein first provided for the commencement thereof, (unless excused from so doing under Paragraph 5 hereof), this lease shall, at the option of the Lessors, automatically cease and terminate, unless prior to such default the time for the commencement of the drilling of such well shall have been extended by the written consent of the Lessors herein. No such extension shall be granted without the payment in advance by the Lessee of an additional sum of money to be mutually agreed upon [117] and paid at the time of the granting of any such extension, nor shall anything in this paragraph contained be construed as giving to the Lessee any right to demand or receive any such extension.

(b) The failure to pay any rental or royalty payable by the Lessee hereunder within the time herein provided therefor and for 10 days after receipt of written notice of such default given by the Lessors herein shall operate, at the option of the Lessors, to forthwith terminate all of the rights of the Lessee hereunder in and to the demised premises or the portion thereof as to which such default may exist, unless such payment has been excused or prevented by operation of law or by the courts in the enforcement thereof.

**Time of Essence.**

(c) The Lessee, notwithstanding anything in Paragraph 15 hereof contained, shall not have any time within

which to cure any default in the payment of any rental or royalty payable hereunder except as in this Paragraph 29 provided for; nor shall the Lessee have more than 10 days after receipt of notice of default from the Lessors within which to cure any substantial default in the prosecution of the drilling of said first or any subsequent well or in the operation of any well unless excused from so doing under Paragraph 5 hereof, and the Lessors may, (subject to the exceptions hereinafter in this subparagraph contained), forfeit said lease and all of the rights of the Lessee thereunder for any failure on the part of the Lessee to remedy [118] within the time in this subparagraph permitted any such default in the drilling or operation of any well; provided, however, that any such forfeiture which may result from any default in drilling or operation of any such well or wells shall not operate to deprive the Lessee of the right to retain and operate any existing well or wells as to which no such default may have occurred, and any such existing well or wells so retained and the land surrounding the same which may be reasonably required in the operation thereof shall remain subject to all of the terms and conditions of this lease, but otherwise such forfeiture shall apply to the entire premises, unless the default resulting in such forfeiture shall have occurred on only one of said parcels, in which event it shall apply only to such parcel.

#### Remedies Cumulative.

30. Any remedies herein provided for shall be deemed to be cumulative with any other remedy or remedies provided by law.

## No Provision for Fees or Compensation.

31. No provision of this indenture is made or entered into directly or indirectly for the purpose of fixing the amount of the fees or other compensation to be paid to any party in interest or any attorney for any party in interest in the bankruptcy proceeding of F. P. Newport Corporation, Ltd., a corporation, bankrupt, for services rendered in connection therewith or otherwise, and the fixing and determination of any fees or compensation to be paid to anyone whomsoever from the assets of said bank- [119] rupt estate is, in accordance with the law, left entirely to the determination of the Court having jurisdiction of said bankruptcy proceeding unaffected by any provision, term or condition, expressed or implied, of this indenture.

## Execution Hereof Subject to Approval of Court.

32. This lease is subject to the approval of the District Court of the United States, Southern District of California, Central Division, and it shall not become or be binding upon any one or more of the parties hereto unless and until an order shall have been made and entered by said court in the Matter of the Estate of F. P. Newport Corporation, Ltd., a corporation, Bankrupt, No. 25308-M, now pending in said court, authorizing, approving and confirming the execution hereof by the said Trustee in Bankruptcy of said bankrupt estate.

In Witness Whereof, each of the Lessors has hereunto subscribed its or his (as the case may be) name, and the Lessee has hereunto caused its corporate name to be sub-

scribed, and its corporate seal affixed, by its officers there-  
unto first duly authorized, the day and year first above  
written.

O. K. W. C. S.

[Seal] SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES

By J. E. Hatch  
Vice President

By R. T. Adams  
Asst. Secretary [120]

[Seal] F. P. NEWPORT CORPORATION.  
LTD.

By F. P. Newport  
President

By J. B. Gribble  
Secretary

By H. F. Metcalf  
As Trustee in Bankruptcy of F. P. Newport  
Corporation, Ltd.. Bankrupt.  
Lessors.

[Seal] UNIVERSAL CONSOLIDATED OIL  
COMPANY

By E. G. Starr  
President

By R. D. Miller  
Secretary  
Lessee.

State of California,  
County of Los Angeles—ss.

On this 14th day of January, 1938, before me, Marian Adams, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared J. E. Hatch, known to me to be the Vice President, and R. T. Adams, known to me to be the Assistant Secretary, of Security-First National Bank of Los Angeles, the national banking association that executed the within instrument, known to me to be the persons who executed the within instrument [121] on behalf of said national banking association, and acknowledged to me that such national banking association executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

[Seal]

MARIAN ADAMS

Notary Public in and for the County of Los Angeles,  
State of California.

My commission expires May 16, 1940.

State of California,  
County of Los Angeles—ss.

On this 14th day of January, 1938, before me, Florence C. Grant, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared F. P. Newport, known to me to be the President, and J. B. Gribble,



known to me to be the Secretary, of F. P. Newport Corporation, Ltd., the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

[Seal]

FLORENCE C. GRANT

Notary Public in and for the County of Los Angeles,  
State of California. [122]

State of California,  
County of Los Angeles—ss.

On this 14th day of January, 1938, before me, Florence C. Grant, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared H. F. Metcalf, known to me to be the person whose name is subscribed to the within instrument as Trustee in Bankruptcy of F. P. Newport Corporation, Ltd., Bankrupt, and acknowledged to me that he executed the same as such Trustee.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

[Seal]

FLORENCE C. GRANT

Notary Public in and for the County of Los Angeles,  
State of California.

State of California,  
County of Los Angeles—ss.

On this 14 day of January, 1938, before me, June Eddy, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared E. G. Starr known to me to be the President, and R. D. Miller known to me to be the Secretary, of Universal Consolidated Oil Company, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the said corporation, and [123] acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

[Seal]

JUNE EDDY

Notary Public in and for the County of Los Angeles  
State of California.

My commission expires March 1, 1941. [124]

[Endorsed]: Filed Jan. 14, 1938 at 30 min. past 4 o'clock p. m. Ernest R. Utley, Referee; Phyllis Gray, Clerk.

[Endorsed]: Filed Nov. 28, 1941. [125]

[SECURITY FIRST NATIONAL BANK EXHIBIT  
2—BY REFERENCE]

In the District Court of the United States  
Southern District of California  
Central Division  
No. 25308-M

In the Matter of

F. P. NEWPORT CORPORATION,

Bankrupt.

FINDINGS AND ORDER

On the 19th day of April, 1937, pursuant to notice given to all creditors of this estate, as required by law, the following matters came on for hearing before this court:

1. The petition of H. F. Metcalf for an order authorizing the execution of an agreement with Security-First National Bank of Los Angeles, hereinafter referred to as the "Bank".

2. The objection of McAdoo & Neblett and William H. Neblett as creditors to said petition.

3. The petition of McAdoo & Neblett and William H. Neblett that the security held by the Bank for the payment of its obligations be adjudged to be void, and the order to show cause issued on said pe- [195] titition requiring the Bank to show cause why the prayer thereof should not be granted.

The Bank was represented by Earl E. Moss, W. C. Shelton and George W. Burch, Jr., H. F. Metcalf by Messrs. Bailie, Turner & Lake, McAdoo & Neblett and William H. Neblett by McAdoo, Neblett & Warner, and

E. Walter Guthrie, and the bankrupt by L. M. Cahill. Oral and documentary evidence having been introduced in support of the various petitions and objections, the matter was thereupon submitted to the court for decision.

Thereafter, on the 13th day of May, 1937, pursuant to a motion of H. F. Metcalf, due notice of the hearing thereof having been given as required by law, an order was made vacating and setting aside the submission of the matters hereinbefore referred to, and authorizing and permitting said H. F. Metcalf to file an amendment to his petition and introduce further and additional evidence in support thereof, and setting the further hearing of all of said matters for the 7th day of June, 1937; thereafter an amendment to said petition was filed by said H. F. Metcalf and additional objections thereto were filed by McAdoo & Neblett and William H. Neblett.

Thereafter Hubert F. Laugharn filed his petition requesting instructions from this court as to whether or not he should join with said H. F. Metcalf in the execution of the agreement referred to in said petition of H. F. Metcalf.

On the 18th day of June, 1937, at the hour of 10 o'clock A. M., pursuant to notice given to the [196] creditors of said bankrupt as required by law, all of the foregoing matters and petitions came on regularly for hearing, together with the amended petition of said H. F. Metcalf and additional objections thereto filed by McAdoo & Neblett and William H. Neblett, the same persons appearing as set forth on the first hearing thereof, together with Messrs. Edmund Nelson and Hugo A. Steinmeyer, representing the Bank of America National Trust and Savings Association, Robert B. Powell, Esq., representing Hubert F. Laugharn and certain creditors; Hiram E.

Casey, Esq., representing certain creditors. Oral and documentary evidence was introduced, the matter argued by counsel and submitted to the court for decision, and the court having duly considered the matter now finds as follows:

## I.

That a petition in involuntary bankruptcy in this matter was filed on the 19th day of March, 1935, and immediately thereafter an order was issued by this court restraining the said Bank from foreclosing its security, which said restraining order has been maintained in force from time to time despite applications on the part of said Bank for permission to sell the property in accordance with the terms and conditions of said trust; that the said Bank by said orders has been retained from enforcing its contract since the 19th day of March, 1935, during which time neither the receiver of said bankruptcy estate nor the said bankrupt, nor anyone else, has [197] paid any sum on principal, interest or advances of said obligation due the said Bank, and on the contrary since the filing of said involuntary petition in bankruptcy the said Bank has advanced for taxes, assessments and carrying charges on said obligation, up to February 1, 1937, the sum of \$107,768.60, and a speedy liquidation of the property held by said Bank as security for its obligation is necessary to prevent a loss to said bankrupt estate.

## II.

That heretofore and on January 12, 1937, the above named F. P. Newport Corporation, Ltd., a corporation, was adjudicated a bankrupt, and the proceedings in the matter of said bankrupt estate were referred to the undersigned Referee for administration.

## III.

That thereafter, on notice duly and regularly given as required by law, a first meeting was held before the undersigned as such Referee on February 23, 1937, for the purpose of electing a trustee herein; that certain parties and creditors contend that at said meeting some creditors cast their votes in favor of H. F. Metcalf as trustee herein; that, over the objections of certain creditors the said-meeting was continued to February 25, 1937, at ten o'clock A.M.; that on said February 25, 1937, an order was made by the undersigned purporting to appoint Hubert F. Laugharn as trustee herein; that thereafter said Hubert F. Laugharn attempted to [198] qualify as such trustee; that thereafter a review was taken from said order of February 25, 1937.

## IV.

That thereafter on March 15, 1937, a hearing was had on the said review before Honorable Paul J. McCormick, Judge of the District Court of the United States, for the Southern District of California; that on March 18, 1937, said Judge made and entered an order setting aside the order made by the undersigned Referee on February 25, 1937, purporting to appoint Hubert F. Laugharn as trustee herein; that by said order of March 18, 1937, it was adjudicated that said H. F. Metcalf was elected trustee herein on February 23, 1937; that by its terms the said order of March 18, 1937, did approve the election of said H. F. Metcalf as such trustee and did fix bonds of said H. F. Metcalf as such trustee in the sum of ten thousand dollars; that thereafter said H. F. Metcalf qualified as such trustee herein and ever since has been and now is acting as such trustee.



## V.

That thereafter McAdoo & Neblett and William H. Neblett filed in the United States Circuit Court of Appeals, Ninth Circuit, a petition for leave to appeal from the order of March 18, 1937; that said Circuit Court allowed said appeal but in so allowing it provided that it should not operate as a supersedeas, and a copy of the order allowing said appeal is hereto attached, marked "Exhibit B" and made [199] a part hereof; that said appeal is pending and undetermined.

## VI.

That this court has jurisdiction to hear and determine the matters set forth in said petitions and the objections thereto and to make and enter this order.

## VII.

That at the date of the adjudication herein, the bankrupt corporation was indebted to said Security-First National Bank of Los Angeles in an amount in excess of \$1,250,000.00; that said indebtedness was and is secured by certain properties transferred to said Bank by the bankrupt corporation on or about March 1, 1930, all of said properties being held by said Bank in accordance with and pursuant to the terms of that certain declaration of trust signed by said Bank under date of March 1, 1930, and approved on said date by the bankrupt corporation, said declaration of trust being commonly known and designated as Security-First National Bank trust No. D-7224 (formerly numbered SS-70401), a copy of which was received in evidence at the hearing of this matter and marked as Exhibit 3.

## VIII.

That said declaration of trust is and at all times has been valid and binding upon all parties thereto; that the

title to the property referred to and described in said trust has been and now is held by said Bank, pursuant to the terms and conditions [200] of said trust, as security for the indebtedness due and owing to said Bank by the bankrupt corporation; that under the terms and conditions of said declaration of trust said Bank is entitled to receive all the rents, issues and profits derived from the property held by the said Bank under said trust, together with all oil royalties or bonuses and all such rents, issues and profits are part of the security held by said Bank for said indebtedness.

### IX.

That on the 25th day of March, 1935, H. F. Metcalf was appointed receiver of the estate of said bankrupt and duly qualified as such. Thereafter, as the result of extensive negotiations with the officers of the bankrupt corporation and the other interested parties, for the purpose of devising a method of liquidation of the properties held by the Bank as security, in which said bankrupt had an interest, an agreement in writing was executed between the bankrupt corporation and the said Bank and the said receiver, a copy of which is hereto attached, marked "Exhibit A" and made a part hereof, which permitted an orderly liquidation of the secured obligations of said bankrupt due the said Bank. That in said agreement the said Bank consented to a reduction of \$81,278.26 of the total amount then due and waived trustee's fees and expenses to that date, and to a reduction of interest from six per cent to four per cent, and consented that the trustee in bankruptcy, for the purpose of enabling [201] him to finance his sales and operating program, might collect rents for a period of one year to the extent of \$7000.00, and under certain conditions as pro-

vided in said contract an additional \$7000.00 for a second year, and otherwise made substantial concessions tending to enable the bankrupt estate to be liquidated in parcels rather than as a whole, and had said Bank not made such concessions and chose to stand on the letter of its contract, by reason of the long period of time during which the same had been in default, the sum of \$1,351,729.38 cash, plus trustee's fees and expenses, would have been required to pay the said secured obligation due said Bank. That during the period of time that the said receiver has been in office since March 25, 1935, to date, neither said Receiver nor the bankrupt corporation, nor any other party interested in said estate, has found any source from which the said sum of \$1,351,729.38 could be procured in one lump sum to refinance said loan.

### X.

That the said agreement, a copy of which is hereto attached marked "Exhibit A", was duly executed by H. F. Metcalf and the bankrupt corporation, in accordance with an order of this court authorizing such execution made pursuant to a petition therefor.

### XI.

That the assets of said bankrupt estate consist almost entirely of real property, located principally in what is known as Verdugo Woodlands, San Fer- [202] nando Valley, and in the Wilmington area; that the Verdugo Woodlands property consists partly of subdivided lots and partly of unsubdivided acreage; that the San Fernando Valley property consists of a ranch of approximately 320 acres of land now ripe for subdivision and sale; the Wilmington property consists of a number of subdivided lots, approximately nine acres on what is

known as Channel No. 3 of the Long Beach Harbor, and approximately sixty acres of unsubdivided property. That there is not intense activity in the Verdugo Woodlands area, and in the San Fernando Valley area, and the present time is propitious for the sale and disposal of the properties of the bankrupt estate located in those areas at prices advantageous to this estate, and it is impossible to determine how long the activity and market for such property will continue to be advantageous. That the subdivided lots in the Wilmington area belonging to said bankrupt estate have a very small value except for their possible oil content. That the nine acres situate on Channel No. 3 is in a particular area where large producing oil wells have been developed and is reputed to be highly valuable for oil purposes. That unless some method is agreed upon for the leasing of the said property under the said trust, a large portion of the oil underlying the said real property may be removed by wells situate upon adjoining properties, and a great detriment and loss will be suffered by the said Bank as a secured creditor and the said bankrupt estate. [203]

## XII.

That unless the said proposed contract between the said Bank, the bankrupt and the trustee of this estate is executed promptly, in order to permit liquidation thereunder and protection of the assets held as security by the said Bank and of this estate, the said Bank threatens to withdraw all negotiations for the amicable liquidation of the property of this estate and insist, by reason of the heavy carrying charges of said property and the long period of time during which said obligation has been in default, and the failure of the bankrupt or the receiver or trustee of the bankrupt estate to make any payment on said obliga-

tion, or for taxes, assessments or interest or other carrying charges, on its right to an immediate foreclosure of said obligation and the sale of said property. That it is highly improbable that one single purchaser, or any group of purchasers acting in concert, could be found who would be willing to pay on a sale thereof the sum of \$1,351.-729.38, plus trustee's fees and expenses, interest and advances, to which the Bank would have been entitled upon a foreclosure and sale under the terms of its security.

### XIII.

That said agreement of January 12, 1937, should by reason of the passage of time since its execution, and for the benefit and protection of the said bankrupt estate, be modified by the execution of a supplemental agreement in the form attached hereto, marked "Exhibit C" and made a part hereof. [204]

### XIV.

The court finds it is for the best interests of the bankrupt estate and absolutely necessary for the preservation thereof, that said agreement of January 12, 1937, as modified in the court's decision and herein, be approved by this court and as so modified it is in all respects fair and equitable.

### XV.

That it is untrue that said declaration of trust known as Security-First National Bank trust No. D-7224 hereinbefore referred to is invalid or void for the reasons set forth in the objections filed by McAdoo & Neblett and William H. Neblett or any or either of them, or otherwise.

### XVI.

That it is untrue that said agreement of January 12, 1937, hereinbefore referred to, is unfair or inadequate or



invalid or void for the reasons or any or either of them alleged in the objections filed by McAdoo & Neblett and William H. Neblett or otherwise.

## XVII.

That the obligations of said bankrupt to said Bank are evidenced by promissory notes described as follows:

Date of Note	Principal	Rate of Interest	Maturity
March 1, 1930	\$760,000.00	7% quarterly	Mar. 1, 1932
June 7, 1932	164,500.00	7% quarterly	Dec. 7, 1932
Dec. 2, 1932	11,060.45	7% quarterly	June 2, 1933
Dec. 30, 1932	10,203.90	7% quarterly	June 30, 1933
May 12, 1933	90,335.58	7% quarterly	May 12, 1934
June 16, 1933	400.00	7% quarterly	May 12, 1934
Oct. 2, 1933	500.00	7% quarterly	May 12, 1934
March 27, 1934	784.57	7% quarterly	May 12, 1934

[205]

That the payment of the above described promissory notes was secured by transfers and conveyances of certain real and personal property executed by the said bankrupt corporation in favor of said Bank, and the terms and conditions under which said transfers and conveyances were made are set forth and declared in a declaration of trust, a copy of which was introduced in evidence herein and marked Exhibit 3.

That the said promissory notes were not sold or offered to be sold to an underwriter for the purposes of sale, or to the public or any person, but were issued by the said bankrupt corporation as evidence of money loaned to it by said Bank, and were delivered to said Bank and have been held and retained by it since their issuance and delivery.



That the said transfers and conveyances of said property were executed and delivered by the bankrupt corporation to the said Bank for the purpose of securing the payment of said promissory notes, and also advances made by the trustee under said declaration of trust and for the costs, fees and expenses of said trustee, and said transfers and conveyances to the Bank are not securities for the issuance, execution and delivery of which a permit of the Commissioner of Corporations of the State of California is required by the Corporate Securities Act of the State of California.

That the said declaration of trust executed by said Bank and approved by said bankrupt corpora- [206] tion was so executed and approved for the purpose of designating the terms and conditions under which the said Bank held title to the property of the bankrupt corporation, and for the purpose of securing the payment of said promissory notes, and is not a security for the issuance, execution and delivery of which a permit of the Commissioner of Corporations of the State of California is required by the Corporate Securities Act of the State of California.

That the said promissory notes constitute secured obligations as described by subdivision 11, subsection (b) of paragraph 2 of the Corporate Securities Act of the State of California, and the said Corporate Securities Act does not apply to the said promissory notes.

### XVIII.

That Hubert F. Laugharn, who was appointed by the undersigned Referee in Bankruptcy as trustee of the above named bankrupt, as hereinabove set forth, has petitioned the court for instructions as to whether or not he should sign the said contract and be bound by the same in the

event it should later be adjudged by a court of competent jurisdiction that his appointment was legal and valid, and the order of the United States District Court adjudging H. F. Metcalf to have been elected trustee reversed. That in order to assure prospective purchasers and lessees of property of the bankrupt estate, in which it has an interest, that the right, title or interest which they may procure in purchasing or leasing property from the said bankrupt [207] estate and the said Bank, is legal and valid, and that it may not be disaffirmed later by said Hubert F. Laugharn in the event of a reversal of the order of the said United States District Judge adjudging said H. F. Metcalf to have been elected trustee, and for the purpose of enabling the trustee and the Bank and prospective purchasers and lessees of such property to procure policies of title insurance (without which many prospective purchasers and lessees would refuse to purchase or lease) it is necessary and for the benefit and advantage of the said bankrupt estate and the said Bank that said Hubert F. Laugharn execute said contract and be bound by the terms thereof in the event of such reversal of the order of the United States District Court, and also execute any deeds, conveyances, leases or other documents necessary to vest title in prospective purchasers, and lessees, or advisable to eliminate any possible question as to the validity of any such documents.

## XIX.

That to adjudge the security held by the Bank for the obligations of the bankrupt to be void would enable the borrower to have and retain the proceeds of the loan without giving any security therefor, and would be unconscionable and unequitable.

**XX.**

That at the time the first loan was made by said Bank to said bankrupt, William H. Neblett, a member of the copartnership of McAdoo & Neblett, [208] creditor herein, was an officer, to-wit: Vice-President of said bankrupt corporation, as well as a director thereof, and had knowledge of all the facts, conditions and circumstances concerning the making of said loan herein set forth, and with such knowledge, as such officer, accepted the said loan and accepted the benefits thereof, and is estopped to deny the validity of said Bank's security.

**XXI.**

That the moneys loaned by said Bank to the bankrupt corporation were for the benefit of the latter, and the said bankrupt corporation having accepted the benefits of the transactions cannot deny its burdens, and the said bankrupt corporation and its creditors are estopped to allege the invalidity of said Bank's security.

**XXII.**

That on the 19th day of April, 1937, the date of the hearing of the first petition of H. F. Metcalf, no objections of any kind were filed or made to the said petition other than the objections of McAdoo & Neblett and William H. Neblett and the petition of McAdoo & Neblett and William H. Neblett.

That on the 18th day of June, 1937, the last date of the hearing of the various matters then at issue, and the various petitions concerning the execution of said contract, no objections were made or filed other than the said objections of McAdoo & Neblett [209] and William H. Neblett and the petition of McAdoo & Neblett and William H. Neblett, and the objection of the bankrupt to the jurisdiction of the court.

XXIII.

The Court finds that said agreement of January 12, 1937, should be modified so as to require all moneys derived from said secured property to flow through the hands of the trustee in bankruptcy and the said trustee in bankruptcy be required to account to the court for the disposition thereof.

XXIV.

No finding is made herein as to the value of the security held by the Bank for the payment of its obligations.

Now, Therefore, good cause appearing,

It Is Hereby Ordered:

1. That that certain agreement dated January 12, 1937, hereinbefore referred to, a copy of which is hereto attached and marked "Exhibit A", be and the same is hereby approved by the court modified by the supplemental agreement in the form hereto attached, marked "Exhibit C" and made a part hereof, and as so modified both the said agreement and supplemental agreement are hereby approved.

2. That H. F. Metcalf, as Trustee in Bankruptcy of the Estate of the above named bankrupt corporation, be and he is hereby authorized and directed to approve and execute as such trustee the said agreement as modified by the execution of the sup- [210] plemental agreement in the form attached hereto, marked "Exhibit C" and made a part hereof.

3. That the petition of Hubert F. Laugharn for instructions is granted and he is hereby authorized and directed to approve and execute the said agreement as modified by the execution of the supplemental agreement in the form attached hereto, marked "Exhibit C" and made a part hereof.

4. That upon approval and execution by said H. F. Metcalf as such trustee of the said agreement of January 12, 1937, as modified, the same shall be binding upon the bankrupt and the bankrupt estate and any trustee who may hereafter be elected or appointed, and shall duly qualify, and upon Hubert F. Laugharn, or any other person who by final decree of a court of competent jurisdiction is adjudged to be the Trustee in Bankruptcy of the estate of the above named bankrupt corporation.

5. To facilitate the securing of policy of title insurance, It Is Ordered that the bankrupt corporation execute the modification of said contract of January 12, 1937, hereinbefore referred to.

Dated: August 13, 1937.

ERNEST R. UTLEY,

Referee in Bankruptcy. [211]

[Endorsed]: Filed Aug. 9, 1937 at 30 min. past 10 o'clock a. m. Ernest R. Utley, Referee; Blanche Morris, Clerk.

[Endorsed]: Filed Sep. 17, 1937. [212]



[Title of District Court and Cause.]

ORDER APPROVING AND CONFIRMING THE  
FINDINGS AND ORDER OF THE REFEREE  
HEREIN DATED AUGUST 13, 1937, AS MODI-  
FIED BY THIS COURT.

Be It Remembered:

That heretofore on September 24, 1937, there came on regularly for hearing before this Court, pursuant to notice duly given, the motion of H. F. Metcalf, Trustee in Bankruptcy herein, for an order approving and confirming the findings, order, and rulings heretofore signed, made, and entered by Honorable Ernest R. Utley, Referee in Bankruptcy, on August 13, 1937, concerning which a petition for review had theretofore been filed by Messrs. McAdoo & Neblett and William H. Neblett.

That thereafter the hearing on said matter was duly and regularly continued from time to time until October 14, 1937, at which time an order was duly made and entered herein by this Court approving and confirming the said findings, order, and rulings of said Referee as modified by a certain stipulation and agreement in writing filed with and approved by this Court on October 14, 1937, entitled "Stipulation Re Modification of Contract or Agreement of January 12, 1937."

That thereafter said Messrs. McAdoo & Neblett and William H. Neblett duly moved to set aside the said order of this Court entered on October 14, 1937; that said



motion came on regularly for hearing before this Court on October 25, 1937; that the Court thereupon made and entered its order setting aside the said order of October 14, 1937, and taking under submission for further consideration the said motion of H. F. Metcalf and continuing the hearing thereon to October 29, 1937. [213]

That on said October 29, 1937, at the hour of ten o'clock A. M. there came on regularly for hearing before this Court the motion of H. F. Metcalf as such Trustee, W. C. Shelton, Esq. and Earl E. Moss, Esq. appearing as Counsel for Security-First National Bank of Los Angeles, L. M. Cahill, Esq. appearing as Counsel for the Bankrupt herein, Hubert F. Laugharn, Esq. appearing in propria persona, W. Mosley Jones, Esq. appearing for and on behalf of Messrs. McAdoo & Neblett and William H. Neblett, and Norman A. Bailie, Esq. and Allen T. Lynch, Esq. appearing as Counsel for H. F. Metcalf, Trustee;

That thereupon there was submitted to this Court for approval a stipulation and agreement in writing entitled "Stipulation Re Modification of Supplemental Agreement Dated August 31, 1937." That after hearing the argument of certain counsel then present, the Court approved said stipulation and agreement and the same was filed.

And it appearing to the Court that the contract and supplemental contract referred to in the Referee's said findings and order as modified by the stipulations and agreements approved by this Court as hereinbefore mentioned are equitable, fair, and advantageous to this bank-

rupt estate and are not contrary to or in violation of any of the provisions of the Bankruptcy Act or of "Public Law No. 373—75th Congress, Chapter 777—1st Session" (sometimes referred to as the Borah Act) or any other law; and good cause appearing therefor,

It Is Ordered by the Court:

1. That said findings, order and rulings of the Honorable Ernest R. Utley, Referee in Bankruptcy herein, dated August 13, 1937, be and they are hereby approved and confirmed as modified by the stipulation and agreement filed herein and approved by this Court on October 14, 1937, entitled "Stipulation Re Modification of Contract or Agreement of January 12, 1937" and the stipulation and agreement filed herein and approved by this Court on October 29, 1937, entitled [214] "Stipulation Re Modification of Supplemental Agreement Dated August 31, 1937."

2. That the agreement of January 12, 1937, and the supplement thereto, both referred to in the Referee's said findings and order of August 13, 1937, modified as provided in the said stipulation and agreement filed October 14, 1937, entitled "Stipulation Re Modification of Contract or Agreement of January 12, 1937" and said stipulation and agreement filed October 29, 1937, entitled "Stipulation Re Modification of Supplemental Agreement Dated August 31, 1937" be and they are hereby approved and ratified and the Trustee or Trustees of this bankrupt estate is or are authorized and instructed to perform all

the terms and provisions thereof required therein to be performed by such Trustee or Trustees.

Dated this 5th day of November, 1937.

PAUL J. McCORMICK  
United States District Judge.

Approved as to form under Rule 44.

L. M. CAHILL  
Counsel for the Bankrupt  
W. C. SHELTON,  
GEORGE BURCH, JR. AND  
EARL E. MOSS

By W. C. SHELTON  
Counsel for Security-First Nat. Bank

ROBERT B. POWELL  
Counsel for Hubert F. Laugharn  
BAILIE, TURNER & LAKE  
By NORMAN A. BAILIE  
Counsel for H. F. Metcalf, Trustee in Bankruptcy.

WM. MOSLEY JONES  
Counsel for McAdoo & Neblett  
and William H. Neblett.

[Endorsed]: Filed Nov. 5, 1937. [215]

[SECURITY FIRST NATIONAL BANK'S EXHIBIT  
3—BY REFERENCE.]

IN RE F. P. NEWPORT CORPORATION, Limited.\*  
McADOO & NEBLETT et al. v. F. P. NEWPORT  
CORPORATION, Limited.

No. 8703

Circuit Court of Appeals, Ninth Circuit.  
July 27, 1938.

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Appeal from the District Court of the United States  
for the Southern District of California, Central Di-  
vision; Paul J. McCormick, Judge.

In the matter of F. P. Newport Corporation, Limited,  
bankrupt. From orders of the bankruptcy court approv-  
ing an agreement as modified by referee's order with fur-  
ther modification, which H. F. Metcalf, trustee, the bank-  
rupt and the Security-First National Bank of Los Ange-  
les had by stipulation agreed to, McAdoo & Neblett, a  
copartnership consisting of William G. McAdoo and Wil-  
liam H. Neblett, and William H. Neblett appeal.

Affirmed.

Wm. H. Neblett, Harry W. Dudley, and E. Walther  
Guthrie, all of Los Angeles, Cal. (Allen H. McCurdy, of  
Los Angeles, Cal., of counsel), for appellants.

W. C. Shelton of Los Angeles, Cal., for appellee Se-  
curity-First Nat. Bank of Los Angeles.

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\*Rehearing denied Sept. 10, 1938.

Bailie, Turner & Lake, Norman A. Bailie and Allen T. Lynch, all of Los Angeles, Cal., for appellee Metcalf, Trustee.

Before WILBUR, DENMAN, and MATHEWS, Circuit Judges.

MATHEWS, Circuit Judge.

This appeal is from two orders—one made orally, the other in writing, the two constituting, in effect, one order—whereby the District Court, sitting in bankruptcy, approved, with modifications, an agreement dated January 12, 1937, between F. P. Newport Corporation, Limited, bankrupt, H. F. Metcalf, receiver [216] (now trustee) in bankruptcy, and Security-First National Bank of Los Angeles, a creditor of the bankrupt, and directed Metcalf, as trustee, to perform the agreement. The facts are as follows:

On or about March 12, 1930, F. P. Newport, Lettie J. Newport, Charles O. Middleton, Henrietta A. Middleton and T. L. Dudley conveyed certain real estate to Title Guarantee & Trust Company of Los Angeles (hereafter called the trust company). Concurrently therewith and as part of the same transaction, they and the trust company executed an agreement constituting, in effect, a declaration of trust (No. P-1512), which provided that the trust company should hold the real estate in trust for their benefit, subject to the terms and provisions of the agreement. On March 20, 1930, F. P. Newport and Lettie J. Newport assigned their beneficial interest in trust No. P-1512 to the bankrupt, by an instrument reading as follows:

“For value received we, F. P. Newport and Lettie J. Newport husband and wife do hereby grant, as-

sign, transfer and set over unto (the bankrupt) our total beneficial interest in and to the trust evidenced by that certain declaration of trust dated March 12, 1930, and issued<sup>1</sup> by (the trust company) under its trust No. P.-1512, together with a like interest in and to the net proceeds and avails arising or growing out of the said trust, and (the trust company) is hereby authorized to pay and turn over unto (the bankrupt) all moneys and benefits growing out of the said interest hereby assigned and to consider (the bankrupt) a beneficiary under said trust to the extent of said interest."

The bankrupt was at that time indebted to Security-First National Bank of Los Angeles (hereafter called the bank) in the sum of \$760,000, with 7% interest from March 1, 1930, which [217] indebtedness was evidenced by the bankrupt's promissory note payable to the bank on March 1, 1932. As security therefor, the bankrupt, on March 25, 1930, conveyed certain real estate to the bank and, at the same time, by an instrument identical in form with that executed by the Newports, assigned to the bank the beneficial interest in trust No. P.-1512 which the Newports had theretofore assigned to the bankrupt. Concurrently therewith and as part of the same transaction, the bank and the bankrupt executed a declaration of trust (No. SS-70401, subsequently designated No. D-7224),<sup>2</sup> which declared that the conveyance and assignment.

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<sup>1</sup>An obvious misuse of the word "issued". The trust company executed, but did not "issue", the declaration of trust.

<sup>2</sup>This declaration and the conveyance therein referred to were dated March 1, 1930. The assignment referred to was dated March 20, 1930. Actually, the declaration was executed and the conveyance and assignment were delivered on March 25, 1930.



though in terms absolute, were intended to be, and were, made to and received by the bank in trust, with power of sale, as security for the payment of the above mentioned note, and for the payment of any additional sums which might thereafter be borrowed by the bankrupt from the bank and be evidenced by other promissory notes of the bankrupt.

The bankrupt did, in 1932, 1933 and 1934, borrow from the bank additional sums aggregating, exclusive of interest, \$277,784.50. This additional indebtedness was evidenced by seven promissory notes of the bankrupt, one of which became due and payable in 1932, two in 1933 and four on May 12, 1934. Thus, on and after May 12, 1934, there was due and owing by the bankrupt to the bank \$1,037,784.50, plus interest. On March 19, 1935, the total amount of said indebtedness, including interest, exceeded \$1,250,000.

(1) The conveyance and assignment by the bankrupt to the bank, together with the declaration of trust executed by them, constituted a deed of trust. *Doane v. California Land Co.*, 9 Cir., 243 F. 67; *Sacramento Bank v. Alcorn*, 121 Cal. 379, 53 P. 813; *Younger v. Moore*, 155 Cal. 767, 103 P. 221; *McDonald v. Smoke Creek Live Stock Co.*, 209 Cal. 231, 286 P. 693; *Petit v. Blenkinson*, 16 Cal. App. 2d 751, 61 P. 2d 527. [218]

On March 19, 1935, a petition in involuntary bankruptcy was filed against the bankrupt. On March 25, 1935, H. F. Metcalf was appointed receiver of the bankrupt estate, and qualified as such. On January 12, 1937, pursuant to an order of the bankruptcy court authorizing and directing him to do so, the receiver made and entered into an agreement with the bankrupt and the bank, whereby the bank consented to a reduction in amount

and to an extension of time for payment of the indebtedness owing to it by the bankrupt, and the bankrupt agreed not to oppose the pending petition to have it adjudged a bankrupt. The agreement provided that the bankrupt's indebtedness to the bank should be paid in five installments, the first to be due on August 1, 1937, the last (and largest) on February 1, 1940; that, to provide money for these payments, the property covered by the deed of trust should be sold or leased on terms and conditions satisfactory to the bank and to the trustee in bankruptcy (thereafter to be appointed), and subject to the approval of the bankruptcy court; and that such trustee, when appointed, should petition the bankruptcy court for an order authorizing him to become a party to the agreement and to be bound by the terms and conditions thereof.

On the day the agreement was executed—January 12, 1937—the bankrupt was adjudged a bankrupt, and the case was referred to a referee. The creditors having failed to elect a trustee, the court on March 18, 1937, appointed Metcalf as trustee, and Metcalf thereupon qualified as such. An appeal from the order appointing him was allowed by this court, but the order allowing such appeal expressly provided that it should not operate as a supersedeas. The order appointing Metcalf as trustee was affirmed on December 22, 1937. *In re F. P. Newport Corp.*, 9 Cir., 93 F. 2d 630. [220]

On March 19, 1937, Metcalf, as trustee, petitioned the court for an order authorizing him to become a party to and be bound by the agreement of January 12, 1937. Appellants, McAdoo & Neblett and William H. Neblett, op-

posed the trustee's petition. After hearing the matter, the referee on August 13, 1937, made an order approving, with modifications, the agreement of January 12, 1937, and authorizing the trustee to become a party thereto and to be bound thereby. On petition for review, the court on October 29, 1937, and November 5, 1937, modified the referee's order and affirmed it as modified. Thereby, the court approved the agreement of January 12, 1937, as modified by the referee's order, with further modifications<sup>3</sup> which the trustee, the bank and the bankrupt had by stipulation agreed to, and ordered that the agreement, as thus modified, be performed by the trustee. This appeal followed.

(2) The appeal is prosecuted by appellant McAdoo & Neblett as an unsecured creditor and by appellant William H. Neblett as a stockholder of the bankrupt. There is no appeal by the bankrupt or the trustee. As a stockholder of the bankrupt appellant William H. Neblett was not and could not have been aggrieved by the order appealed from. As such stockholder, therefore, he has no interest or standing to prosecute this appeal.

(3) It is contended by McAdoo & Neblett (hereafter called appellant) that the trial court had no jurisdiction to make the order now under review, because, at the time it was made, the appeal from the order appointing Metcalf

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<sup>3</sup>The effect of the modifications was to extend the time for paying the five installments mentioned in the agreement, and to require all payments for property sold thereunder to be made to the trustee.

as trustee was still pending. There is no merit in this contention. The former appeal was not taken as of right, but was allowed by this court in the exercise of its discretion, pursuant to § 24b of the Bankruptcy Act, 11 U. S.C.A. § 47(b). As previously stated, the order allowing that appeal expressly provided that it should not operate as a supersedeas. It did not so operate, nor did it deprive the trial court of jurisdiction to proceed in the case. The cases [221] cited by appellant<sup>4</sup> as supporting its contention bear no resemblance to this case and, obviously, are not in point.

(4) Appellant contends that the deed of trust<sup>5</sup> securing the bankrupt's indebtedness to the bank was void and unenforceable, because issued in violation of the California Corporate Securities Act, §3 of which, as it stood on March 25, 1930 (Stats. 1917, p. 675), provided: "No company shall sell \* \* \* or offer for sale, negotiate for the sale of, or take subscriptions for any security of its own issue until it shall have first applied for and secured from the commissioner (of corporations) a permit authorizing it so to do. \* \* \*"

Section 12 of the Act (Stats. 1917, p. 679), provided: "Every security issued by any company, without a permit

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<sup>4</sup>First National Bank v. State National Bank, 9 Cir., 131 F. 430; Rothschild & Co. v. Marshall, 9 Cir., 51 F. 2d 897; Great Western Stage Equipment Co. v. Iles, 10 Cir., 70 F. 2d 197; Joerger v. Mt. Shasta Power Corp., 214 Cal. 630, 7 P. 2d 706; Oakland Paving Co. v. Donovan, 19 Cal. App. 488, 126 P. 388.

<sup>5</sup>Comprising, as before stated, the conveyance and assignment by the bankrupt to the bank and the declaration of trust executed by them on March 25, 1930.

of the commissioner authorizing the same then in effect, shall be void \* \* \*."

The deed of trust securing the bankrupt's indebtedness to the bank was not issued by the bank. If issued at all, it was issued by the bankrupt. Assuming, without deciding, that it was issued, and that it was a security for the issuance of which a permit was required, it was the bankrupt's, not the bank's, duty to apply for and obtain such permit. If issuance of the deed of trust without a permit was a violation of the Corporate Securities Act, the bankrupt was the violator, and the bank was the victim of such violation. Being itself the wrongdoer, the bankrupt cannot, nor can its trustee or creditors, take advantage of its own wrong and thus defraud the innocent party to the transaction. *Laugharn v. Bank of America National Trust & Savings Ass'n*, 9 Cir., 88 F. 2d 551, 554;<sup>6</sup> *Eberhard v. Pacific Southwest Loan & Mortgage Corp.*, 215 Cal. 226, 228, 9 P. 2d 302, 303; *Western Oil & Refining Co. v. Venago Oil Corp.*, 218 Cal. 733, 743, 24 P. 2d 971, 975, 88 A.L.R. 1271; *Domestic & Foreign Petroleum Co. v. Long*, 4 Cal. 2d 547, 558, 51 P. 2d 73, 78; *Robbins v. Pacific Eastern Corp.*, 8 Cal. 2d 241, 277, 65 P. 2d 42, 61. We hold, therefore, that, as to the bank, the deed of trust was valid and enforceable. [223]

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<sup>6</sup>Overruling *Cecil B. DeMille Productions v. Woolery*, 9 Cir., 61 F. 2d 45, cited by appellant.



(5) As to the validity of the declaration of trust executed by the trust company, the Newports and others on March 12, 1930, or of the assignment by the Newports to the bankrupt of their interest in that trust, we express no opinion. Since these instruments took nothing from the bankrupt, but were, instead, the source of its title to part of the estate now being administered for the benefit of its creditors, including appellant, appellant cannot be heard to question their validity.

In approving, with modifications, the agreement of January 12, 1937, the trial court has not, as contended by appellant, surrendered its jurisdiction to administer the bankrupt estate. The court retains and is exercising that jurisdiction by and through the trustee in bankruptcy.

Nor is it true that, under the agreement, administration of the estate will be unduly prolonged, or, as appellant says, "projected into the future." Under the agreement, as modified, liquidation of the bank's claim must be completed on or before September 7, 1940. That does not seem to us an unreasonable time.

(6) Appellant assigns as error the trial court's finding that the agreement, as modified, was equitable, fair and advantageous to the bankrupt estate. The question thus attempted to be raised is one of fact, which, on this appeal, under §24b of the Bankruptcy Act, 11 U. S. C. A. §47(b), we may not consider, our review in such cases being limited to questions of law.

Orders affirmed. [225]



[SECURITY FIRST NATIONAL BANK'S  
EXHIBIT 4]

Copy

July 30, 1943

Mr. H. F. Metcalf  
Trustee in Bankruptcy for  
F. P. Newport Corporation, Ltd., a Bankrupt,  
Central Building  
Los Angeles, California  
and  
F. P. Newport Corporation, Ltd.  
Central Building  
Los Angeles, California

You and each of you will please take notice that there remains unpaid, due and owing from the Bankrupt, F. P. Newport Corporation, Ltd., to Security-First National Bank of Los Angeles, upon the obligations due by said bankrupt to said Bank, the following amounts:

- (1) An unpaid balance on the principal of the loan of said Bank to said Bankrupt.....\$617,378.12
- (2) Interest on said loan at the rate of 4% per annum from June 7, 1943.
- (3) Trust advances made by the Security-First National Bank of Los Angeles, as Trustee, under and in accordance with the terms of Declaration of Trust D 7224..... 17,897.73
- (4) Fees payable to Security-First National Bank of Los Angeles, as Trustee of Trust No. D 7224, in accordance with the said Declaration of trust 4,518.22

Demand is hereby made for the payment of said sums, now long overdue and unpaid.

Unless said sums be paid to said Security-First National Bank of Los Angeles *with* sixty (60) days from the date of service of this notice upon you, the said Bank will be compelled to foreclose its security for the payment of said obligations in accordance with the terms and conditions of said Declaration of Trust No. D 7224, and the contract of January 12, 1937 (as modified and amended between you and each of you and Security-First National Bank of Los Angeles).

This notice is in compliance with Article II of said Declaration of Trust No. D 7224, and the Agreement of January 12, 1937, as modified and amended.

Please take further notice, that since the execution of said Agreement of January 12, 1937, Mr. H. F. Metcalf, as Trustee in Bankruptcy, has collected and retained for the use of the Bankrupt Estate certain rents, issues and profits of the Trust Estate not exceeding \$7,000, except the income from oil leases. [226]

H. F. Metcalf and F. P. Newport Corporation, Ltd.  
—2—7—30—43

Under said Agreement of January 12, 1937, the Bank agreed thereto for a period of one (1) year. This Agreement was extended for approximately one year more. Thereafter the collection and retention of said rents, issues and profits was acquiesced in by the Bank.

This is to notify you that, from the date of this notice, the Trustee in Bankruptcy, Mr. H. F. Metcalf, is requested to make such collections of said rents, issues and profits and to hereafter hold and disburse them strictly in accordance with the terms and conditions of said Declaration of Trust No. D 7224 and the Contract of January 12, 1937, as modified and amended.

Security-First National Bank of Los Angeles revokes its tacit consent to the use of these funds by the Trustee in Bankruptcy as above noted, and demands *there* hereafter all funds subject to the provisions of said Declaration of Trust D 7224 and the Agreement of January 12, 1937, as modified and amended, be collected and disbursed strictly in accordance with said Declaration of Trust and said Agreement.

Dated this 30th day of July, 1943.

SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES

By R. T. Adams  
Assistant Secretary.

Re No. 25308-M. F. P. Newport Corporation, Ltd.,  
U. S. Gov't vs. Trustee and Re Pet. to Security First Na-  
tional Bank Re foreclosure. Exhibit No. 4. Filed 11-23,  
1943. Ernest R. Utley, (R.) Referee. [227]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER RE PAYMENT OF FEDERAL  
INCOME TAXES FOR CALENDAR YEARS  
1938 and 1939

On September 24, 1943, there was filed in these proceedings by the United States of America a Petition for Order to Show Cause Why Trustee Should Not Be Directed to Pay 1938 and 1939 Federal Income Taxes. On the filing of said petition an order to show cause was issued by this Court directed to H. F. Metcalf, as Trustee in Bankruptcy herein. and Security-First National Bank of Los Angeles, a national banking association, directing them and each of them to appear before this Court on September 30, 1943, at the hour of ten a. m.. then and there to show cause if any they had why an order should not be made herein directing the Trustee in Bankruptcy to pay the 1938 and 1939 federal income taxes and interest thereon from the funds or income of the above entitled bankrupt estate. Answers to said petition and order to show cause were filed by the said Trustee in Bankruptcy and said Bank. The said matter came on for hearing before this Court on September 30, 1943, at the hour of ten a. m. and was thereupon, and from time to time thereafter, continued to November 23, 1943. [37]

On November 23, 1943, the said matter came on for hearing at the hour of ten a.m. Messrs. Charles H. Carr, United States Attorney, E. H. Mitchell, Assistant United States Attorney, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, by Eugene Harpole, Esq., appeared as Counsel for United States of America and

Collector of Internal Revenue; Messrs. Bailie, Turner & Lake by Allen T. Lynch, Esq., appeared as Counsel for H. F. Metcalf as Trustee in Bankruptcy herein; Messrs. W. C. Shelton and George W. Burch, Jr., appeared as Counsel for Security-First National Bank of Los Angeles; Edmund Nelson, Esq., appeared as Counsel for Bank of America National Trust and Savings Association; and L. M. Cahill, Esq., appeared as Counsel for the Bankrupt.

Evidence oral and documentary was offered and received on the hearing of said matter for and on behalf of the respective parties and the matter was argued by Counsel and submitted for decision by the Court; and, being fully advised in the premises,

#### The Court Finds:

##### I.

That on or about March 1, 1930, F. P. Newport Corporation, Ltd., a corporation, the bankrupt herein, borrowed from Security-First National Bank of Los Angeles the sum of \$760,000.00, which is the same debt as that mentioned in the contract of January 12, 1937, more particularly hereinafter mentioned, including accretions thereto by way of accumulation of interest, additional borrowings, advances for taxes and for trustee's fees and expenses of the said bank.

##### II.

That on or about March 1, 1930, F. P. Newport Corporation, Ltd., a corporation, conveyed to the Security-First National Bank of Los Angeles title to certain real property by four different grant deeds, the same being recorded in Book 9902, page 28, Book 9868, page 150, Book 9850, page 181, and Book 9838, page 216, respectively, of Official Records of Los Angeles County.

California. That concurrently [38] with the execution of said grant deeds to said Bank, the said Bank executed and delivered to F. P. Newport Corporation, Ltd. its certain written declaration of trust, under date of March 1, 1930, now known and referred to as Trust No. D 7224, formerly known and numbered Trust SS 70401, by the terms of which it acknowledged that it had received a conveyance of said property as trustee, with power of sale, as security for the payment of said loan of \$760,000.00 made by said Bank to said F. P. Newport Corporation, Ltd., and as security for all advances, costs, trustee's fees, and expense advance and incurred under the terms of said declaration of trust.

### III.

That thereafter F. P. Newport Corporation, Ltd. by three different grant deeds, conveyed to said Bank title to certain additional real property, under and pursuant to the terms of said declaration of trust, and as additional security for the payment of said indebtedness, said deeds being recorded in Book 11510, page 239, Book 11493, page 271, and Book 9929, page 62, respectively, of Official Records of Los Angeles County, California.

### IV.

That the properties so transferred to said Bank and record title to which is now held by it pursuant to the terms of said declaration of trust, consist largely of real property, some of which is located in what is known as "Verdugo Woodlands" and some in the San Fernando Valley, and some in the Wilmington Harbor area. That the Verdugo Woodlands property consists partly of subdivided lots and partly of unsubdivided acreage; that the San Fernando Valley property consists of approximately 154 acres; that the Wilmington Harbor property con-



sists of a number of subdivided lots, nine acres of which is on what is known as Channel No. 3 of the Long Beach Harbor, and approximately 20 acres of unsubdivided property in said harbor area.

V.

That on or about March 1, 1930, F. P. Newport Corporation, [39] Ltd., as further and collateral security for the aforementioned indebtedness, by written assignment, pledged to the Security-First National Bank of Los Angeles the entire beneficial interest in and to said Trust No. D 7224. That on May 16, 1933, the said Bankrupt Corporation, F. P. Newport Corporation, Ltd., and F. P. Newport and Letitia J. Newport, his wife, granted to said Security-First National Bank of Los Angeles as trustee all of their right, title and interest in and to the real property situated on Channel No. 3, in the Long Beach Harbor area, containing nine acres more or less, the said grant deed being recorded in Book 1226, page 21 of Official Records of Los Angeles County. That said property so conveyed had previously been conveyed to the said Bank as such trustee on March 20, 1930, and said deed of May 16, 1933, confirmed and ratified said prior conveyance to said Bank. That the legal title to said nine acre parcel of land was then vested in Title Guarantee & Trust Co., as trustee. That subsequently to the said above mentioned conveyance and prior to the execution of the oil lease hereinafter referred to, the said Bank at the request of H. F. Metcalf, Trustee in Bankruptcy, and upon the order of the above entitled Bankruptcy Court, did advance a large sum of money to compromise the claims of various persons in and to said nine acre tract of land. That upon said adverse claims being so satisfied and discharged the legal title to said nine acre tract was conveyed to Security-

First National Bank of Los Angeles by said Title Guarantee & Trust Co. to be held by said Bank subject to the terms and conditions of said declaration of trust D 7224, and the contract of January 12, 1937, as supplemented, modified and amended. That under the order of the said Bankruptcy Court, said advance was added to and became a part of the indebtedness owing to said Bank by said Bankrupt.

## VI.

That the said declaration of trust No. D 7224 provides, among other things, as follows: [40]

“Article Sixteenth: All proceeds and avails arising from the rents, issues, leases and sales of the Trust property, or otherwise, shall be paid to and received by the said Trustee, and said Trustee shall disburse all such proceeds and avails as follows:

\*      \*      \*      \*      \*      \*      \*

“III. All proceeds and avails arising from the leases and rentals of said property so received by the said Trustee shall be credited to the General Fund.

\*      \*      \*      \*      \*      \*      \*

“VII. Out of the moneys credited to the General Fund the Trustee shall pay:

1st: Its accrued costs, fees and expenses as hereinafter determined, unless they be sooner paid;

2nd: The taxes, assessments and installments of principal and interest on street bonds assessed or imposed on or against said property then due and unpaid, not payable by the purchaser thereof from the said Trustee.

Should the moneys in the hands of the Trustee available for that purpose be insufficient to pay said

taxes and assessments, and installments of the principal and interest on the street bonds when due, then the Beneficiary by its ratification of this Declaration of Trust, covenants and agrees to immediately pay any deficiency in the amount due on said taxes, assessments and bonds to the Trustee.

3rd. Any improvements upon the Trust property, upon the order of the Beneficiary hereunder, or its duly authorized Agent, and/or as contracted by the Trustee as provided for in Article Fourteenth hereof;

4th. Interest, as and when due, on any note secured hereby, if there are not sufficient moneys in the Interest Fund with which to pay the same;

5th: Any liens or incumbrances covering the property sold, not payable by the purchaser thereof from the said Trustee;

6th: Principal upon any note secured hereby in favor of the Payee after the due date thereof; and

7th: Subject to the foregoing provisions, and provided the Beneficiary is not in default in any manner under the terms of this Declaration of Trust, all of the balance of the moneys received by the said Trustee shall be applied, disbursed and paid in convenient monthly installments to F. P. Newport Corporation, Ltd., a Delaware Corporation, the Beneficiary hereunder, its successors or assigns."

## VII.

That the indebtedness secured by said declaration of trust and the collateral pledge of the beneficial interest therein being long past due, the said Security-First National Bank of Los Angeles, as trustee under said declaration of trust, did in accordance with the provisions

of said declaration of trust declare the entire unpaid balance of the obligation to be due, and fixed the date for the sale of the real property, standing in the name of said Bank as said trustee, for March 29, 1935.

#### VIII.

That on March 19, 1935, an involuntary petition in bankruptcy was filed against the above named Bankrupt. Thereafter, and on or about March 25, 1935, H. F. Metcalf was appointed Receiver in Bankruptcy of all the property and assets of the above named Bankrupt Corporation, including the property record title to which was held by the said Security-First National Bank of Los Angeles as such trustee, and the above entitled Court duly restrained said Bank from [42] proceeding with said foreclosure sale.

#### IX.

That on or about March 25, 1935, said H. F. Metcalf duly qualified as such Receiver and went into possession of the property and assets of said Bankrupt Corporation, including the real property conveyed to said Security-First National Bank of Los Angeles, as trustee, as hereinabove found.

#### X.

That from time to time thereafter, and prior to the 12th day of January, 1937, said Bank made application to the above entitled court for leave to foreclose and sell that certain real property record title to which was held by it under the said trust No. D 7224. That the Court, over the objection of said Security-First National Bank of Los Angeles, continued said restraining order in full force and effect.

#### XI.

That subsequent to the 25th day of March, 1935, and prior to the adjudication of said F. P. Newport Corpora-

tion, Ltd. as a Bankrupt, extensive negotiations and conferences were had by and between the Security-First National Bank of Los Angeles, the Receiver and their respective counsel, and other interested parties, looking to, and in an effort to devise a method for the liquidation of the properties record title to which was held by said Bank under its trust hereinabove mentioned, and to obviate the necessity of litigation between said Bank and said Bankrupt Estate. That following these conferences and negotiations, an agreement in writing, bearing date of January 12, 1937, was made and executed by and between the Bankrupt Corporation, the said Bank and the said Receiver, which agreement was subsequently supplemented and modified.

## XII.

That the said agreement, together with a supplement thereto and modifications thereof, was duly approved, ratified and confirmed [43] by this Court, and the above entitled Court. That thereafter an appeal from the order so approving and ratifying said agreement, supplement thereto and modifications thereof, was taken to the United States Circuit Court of Appeals (Ninth Circuit) which Court affirmed the said order. That a petition for a writ of certiorari to review the said order was filed with the Supreme Court of the United States and said petition was denied.

## XIII.

That thereafter, on January 12, 1937, said F. P. Newport Corporation, Ltd. was duly *adjudicated* a bankrupt.

## XIV.

That under date of March 18, 1937, H. F. Metcalf was duly appointed Trustee of said bankrupt estate. duly qualified as such Trustee and ever since said date has been



and now is in possession of the property and assets of the Bankrupt Corporation as such Trustee. That said agreement as supplemented and modified was duly signed by said H. F. Metcalf as Trustee in Bankruptcy under the order and direction of this Court.

### XV.

That by the terms of said agreement as so supplemented and modified, it was stipulated, among other things, that the principal amount of the indebtedness due to said Security-First National Bank of Los Angeles amounted to \$1,304,918.77, and should be payable in installments as therein provided, and that all indebtedness due said Bank should be paid on or before September 7, 1940. That the said agreement, as modified, among other things, provides:

“That while the said Declaration of Trust No. D 7224 and the contract of January 12, 1937, provide expressly that all moneys from Sales and Leases of Property in said Trust shall be paid to and be received by the Bank, it is, nevertheless, agreed, in order to comply with the bankruptcy law requiring that all bankruptcy funds be accounted for by [44] the Trustee and be disbursed by him only upon checks or warrants countersigned by the Referee, that all such moneys shall be paid to said Trustee in Bankruptcy, and, until the indebtedness due the Bank has been paid, shall be by him forthwith paid over in full to the Bank, to be distributed in accordance with the terms of said Trust No. D 7224 and the agreement of January 12, 1937, as modified hereby.

“Recognizing that the Bank has a prior right to the moneys in the preceding paragraph mentioned until the indebtedness due it has been paid, it is therefore expressly understood and agreed that such funds



or moneys so paid to and received by the said Trustee in Bankruptcy from Sales or Leases or other disposition of property under said Trust shall, until the indebtedness due the Bank has been paid and except as hereinafter provided, be, while in his possession impressed with the lien of the Declaration of Trust securing the indebtedness owing to the Bank, and such funds or moneys shall be deposited by the Trustee in Bankruptcy in a separate bank account and not commingled with any other funds of the Bankrupt Estate, and shall be deemed earmarked for application on the Bank's indebtedness as provided in said agreement of January 12, 1937, and this supplement thereto, and except as in said agreement and said supplement provided, shall not, until the indebtedness due the Bank has been paid, become any part of the general assets of the Bankrupt Estate. No provision of said agreement of January 12, 1937, or this supplement thereto is made or entered into, directly or indirectly, for the purpose of fixing the amount of the fees or other compensation to be paid to any party in interest or any attorney of any party in interest in this bankruptcy proceeding, for services [45] rendered in connection therewith or otherwise, and the fixing and determination of any fees or compensation to be paid to any one whomsoever from the assets of this Bankrupt Estate, is, in accordance with the law, left entirely to the determination of the court having jurisdiction of this bankruptcy proceeding, unaffected by any provision, term or condition, express or implied, of said contract of January 12, 1937, or of this supplement thereto."

## XVI.

That thereafter, and with the approval of this Court, said Trustee in Bankruptcy, and Security-First National Bank of Los Angeles as trustee under its said trust, and the Bankrupt, did on or about the 14th day of January, 1938, make and enter into a lease with the Universal Consolidated Oil Company, as Lessee, under and by the terms of which there was let to said Lessee a portion of the real property of said Bankrupt Estate, the title to which stands of record in the name of said Security-First National Bank of Los Angeles as trustee and as security for the obligation owing to said Bank, for the purpose of producing oil and gas from said property. Thereafter the Lessee discovered oil and gas on said property and has produced oil and gas therefrom in commercial paying quantities.

## XVII.

That pursuant to said order of court approving said agreement, supplement and modifications, the oil and gas royalties received by said Trustee in Bankruptcy from Universal Consolidated Oil Company have been deposited in a special account carried in the name of the Trustee in Bankruptcy at the head office of Security-First National Bank of Los Angeles, Sixth and Spring Streets, Los Angeles, California. That oil and gas royalties including bonuses actually paid to the Trustee in Bankruptcy under the terms and provisions of said lease during the years 1938 and 1939 were paid to said Bank, with the consent of said Bank, by the Trustee in Bankruptcy on orders of this [46] court to cover taxes assessed against the properties record title to which was held by said Bank as trustee under its said trust, cost of engineering services for checking oil and gas pro-

duction on the property leased to said Universal Consolidated Oil Company, and to apply on account of interest and principal owing on the secured debt to said Bank.

### XVIII.

That on July 22, 1940, Nat Rogan, as United States Collector of Internal Revenue for the Sixth Collection District of California, filed a claim in these proceedings on behalf of the United States of America in the amount of \$19,363.65 representing the amount of alleged deficiency in income tax determined by the Commissioner of Internal Revenue as owing by the Trustee in Bankruptcy and the bankrupt estate for the years 1938 and 1939. That objections to said claim were filed by the said Trustee in Bankruptcy and sustained by this Court. That, on appeal, the United States Circuit Court of Appeals for the Ninth Circuit reversed this Court and held that said H. F. Metcalf as such Trustee in Bankruptcy and said bankrupt estate were indebted to the United States of America for federal income tax as set forth in said claim. That, pursuant to said judgment of said Circuit Court of Appeals, the Honorable Paul J. McCormick as Judge of the above entitled Court made and signed an order in these proceedings on April 8, 1943, allowing said claim in full with interest as provided by law. That said claim has not nor has any part thereof been paid.

### XIX.

That said Security-First National Bank of Los Angeles received during the years 1938 and 1939 a total of \$451,851.01 from oil and gas royalties paid to it by said Trustee in Bankruptcy, of which \$97,665.88 was applied by said Bank on interest owing to it, \$59,010.43 on taxes assessed against the properties record title to which stands in the name of said Bank as trustee under

its said trust, \$5,903.23 for expenses or cost of checking production of oil and gas, [47] and the balance of \$289,271.47 on the principal of the secured indebtedness owing to said Bank.

## XX.

That the Commissioner of Internal Revenue determined that the net income on which said tax was assessed was \$87,066.42 for the calendar year 1938 and \$30,288.99 for the calendar year 1939.

## XXI.

That said Trustee in Bankruptcy has not now, nor has he at any time had since the assessment of said tax, any funds with which to pay said tax unless oil and gas royalties paid to him under said lease with Universal Consolidated Oil Company can be used for the payment thereof. That said Security-First National Bank of Los Angeles claims and asserts that the whole of said oil and gas royalties must be paid to it without deduction.

## XXII.

That said agreement of January 12, 1937, provides in part as follows:

“Disbursement of the Special Fund. Out of the Special fund, the Bank shall pay all taxes, assessments, insurance, interest and other charges and expenses of said Trust No. D 7224 not theretofore paid by the Trustee in Bankruptcy. After payment out of said Special Fund of all current interest, taxes, assessments and Trust Expense, and after first setting aside in said Special Fund a reserve sufficient to pay all interest, taxes, assessments and Trust Ex-

penses for one additional year, the remainder of the money in said Special Account shall be paid over to the Trustee in Bankruptcy.

\* \* \* \* \*

"All income from oil, in the nature of bonuses, rentals and royalties from any of the properties held by the Bank in Trust, so paid to the Bank, shall be [48] placed by the Bank in a Special Oil Account.

"The funds in said Account shall be available to the Trustee in Bankruptcy for the purpose of making up any deficiency in the 'Special Fund,' to pay interest, taxes, assessments and expenses, as hereinabove provided, in order to obviate a default; provided, however, that all sums taken from said oil Account for such purpose shall be repaid to said Oil Account from moneys thereafter coming into Special Fund and not needed to pay other or additional interest, taxes, assessments, or expenses then due.

"Except as herein provided, all amounts in said account, shall be applied on September first and March first of each year, or on such other dates as shall be mutually agreed upon by the Trustee in Bankruptcy and the Bank, on the principal of said indebtedness and shall be considered as cash applied on the quotas of principal as hereinbefore set forth."

### XXIII.

That said Trustee in Bankruptcy now has on deposit in said special account carried in his name at said head office of Security-First National Bank of Los Angeles the Proceeds of oil and gas royalties received by him from Universal Consolidated Oil Company amounting to approximately \$21,000.

## XXIV.

That said Trustee in Bankruptcy now has on deposit in a special account carried in his name as said Trustee at the head office of Citizens National Trust & Savings Bank of Los Angeles. Fifth and Spring Streets, Los Angeles, funds representing surface rentals of \$1495.02 received from tenants of portions of the properties record title to which is held by Security-First National Bank of Los Angeles as trustee under its trust D 7224. [49]

From the Foregoing Findings of Fact, the Court Concludes:

## Conclusions of Law

1. That the income tax for the calendar years 1938 and 1939 hereinbefore referred to was the result of the production of income the full benefit and enjoyment of which was had by Security-First National Bank of Los Angeles.

2. That the properties record title to which is held by said Bank under its trust D-7224 as security for the obligation owing to said Bank by the Bankrupt have been administered by said Trustee in Bankruptcy by and with the consent and approval of said Bank and for the benefit of said Bank.

3. That the income taxes for the years 1938 and 1939 are incidental to said administration and a necessary part of the expense of operating, preserving, collecting and liquidating the properties and distributing the proceeds thereof.

4. That Security-First National Bank of Los Angeles, having had the full benefit of the income which resulted in the assessment of said taxes, should pay the taxes out of that income for said taxes are a necessary cost of producing said income.



5. That by the provisions of said agreement of January 12, 1937, as supplemented and modified, the oil and gas royalties received from Universal Consolidated Oil Company can be used for the purposes of paying taxes including income taxes assessed against the Trustee in Bankruptcy and the bankrupt estate herein.

6. That said claim of United States of America and the Collector of Internal Revenue for said income taxes should be paid by the Trustee in Bankruptcy herein out of the special accounts of said Trustee in Bankruptcy with said Security-First National Bank of Los Angeles and with said Citizens National Trust & Savings Bank of Los Angeles, and if said funds now on deposit in said special accounts are insufficient to pay said taxes in full and interest thereon, such deficiency should be paid by the Trustee in Bankruptcy out of oil and [50] gas royalties when and as received by him from Universal Consolidated Oil Company.

7. That since the funds now on deposit in said special accounts of said Trustee in Bankruptcy appear to be insufficient to pay said income taxes in full and interest, it is not necessary for this Court at this time to determine whether oil and gas royalties paid to the Trustee in Bankruptcy herein under said oil and gas lease with Universal Consolidated Oil Company or surface rentals received by the Trustee in Bankruptcy from tenants of the property record title to which is held by said Bank as trustee under its said trust D-7224 may be used to pay expenses of administration other than said income taxes.

Order

Now, Therefore, Good Cause Appearing, It Is Hereby Ordered:

(a) That the Trustee in Bankruptcy be and he is hereby directed and ordered to pay said Collector of In-

ternal Revenue the said income taxes assessed for the calendar years 1938 and 1939, and interest thereon as provided by law, out of oil and gas royalties received or to be received by the Trustee in Bankruptcy herein from properties record title to which stands in the name of Security-First National Bank of Los Angeles as trustee under its trust D-7224 and/or surface rentals received therefrom, and, for the purpose of making said payments, said Trustee in Bankruptcy may use any funds now on deposit in the special accounts carried in his name as said Trustee in Bankruptcy herein at the head offices of Security-First National Bank, Sixth and Spring Streets, Los Angeles, California, and Citizens National Trust & Savings Bank, Fifth and Spring Streets, Los Angeles, California.

(b) That, on application of Security-First National Bank of Los Angeles, payment of said taxes out of said funds is hereby stayed until five (5) days from and after final determination of any review of this order duly prosecuted by said Bank as provided by law. [51]

(c) The petition and prayer of Security-First National Bank of Los Angeles that said Trustee in Bankruptcy be required to pay over to said Bank the said oil and gas royalties and surface rentals on deposit in said special accounts of said Trustee in Bankruptcy is hereby denied without prejudice to said Bank to renew its application or prayer on appropriate pleadings when it is made to appear that said Trustee in Bankruptcy has in his possession or on deposit in said special accounts or either of them funds in excess of the amount required to pay income taxes.

The Court Makes No Determination at This Time as to Whether or Not Oil and Gas Royalties Paid or to Be Paid to the Trustee in Bankruptcy Herein Under the

Lease With Universal Consolidated Oil Company or Surface Rentals Received or to Be Received by Said Trustee in Bankruptcy From Tenants of Any of the Properties Record Title to Which Is Held by Security-First National Bank of Los Angeles as Trustee Under Its Trust D-7224 Can Be Used for the Purpose of Paying Expenses of Administration Other Than Said Income Taxes.

Dated this 6 day of June, 1944.

ERNEST R. UTLEY

Referee in Bankruptcy.

Approved as to Form:

EDMUND NELSON

Attorney for Bank of America, etc.

L. M. CAHILL

Attorney for the Bankrupt

CHARLES H. CARR,

United States Attorney,

E. H. MITCHELL,

Assistant United States Attorney, and

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue

By Eugene Harpole

BAILIE, TURNER & LAKE

By Allen T. Lynch

Attorneys for H. F. Metcalf, as Trustee in  
Bankruptcy herein. [52]

June 2nd, 1944. Receipt of copy of within findings and order is hereby acknowledged. W. C. Shelton, Atty. for Security-First National Bank of Los Angeles.

[Endorsed]: Filed Jun. 6, 1944 at ..... min. past 9 o'clock a. m. Ernest R. Utley, Referee; R Clerk.

[Endorsed]: Filed Oct. 18, 1944. [53]

[SECURITY-FIRST NATIONAL BANK'S  
EXHIBIT 5.]

Copy

Law Offices  
BAILIE, TURNER & LAKE  
811 Citizens National Bank Building  
Los Angeles, California

December 12, 1941

In Re: F. P. Newport Corporation,  
Ltd., a corporation. Bankrupt.

Security-First National Bank of Los Angeles,  
Sixth and Spring Streets,  
Los Angeles, California.

Gentlemen:              Attention: Mr. Russell Adams.

Referring to that certain petition entitled "Petition for Authority to Sell, and For Confirmation of Sale of Real Estate to John Drew," a copy of which has heretofore been handed to you and to which petition reference is hereby made for further particulars, the undersigned, in consideration of your agreement as expressed in said petition to release or pay to the Trustee in Bankruptcy twenty per cent (20%) of the purchase price of the property described in said petition for the purposes therein set forth, hereby jointly and severally waive and release any and all rights, if any they may have, to insist that their fees as counsel for the Trustee in Bankruptcy, or any part thereof, be paid out of royalties received or to be received from Universal Consolidated Oil Company under the lease heretofore made and entered into by and between yourselves, the bankrupt and the Trustee in

Bankruptcy, as lessors, and said Universal Consolidated Oil Company, as lessee, and approved by the bankruptcy court.

The foregoing agreement shall be effective only while the indebtedness or any part thereof owing you and referred to in the agreement of January 12, 1937, remains unpaid.

Very truly yours,

BAILIE, TURNER & LAKE

By Norman A. Bailie (signed)

By Richard A. Turner (signed)

By Frederick W. Lake (signed)

RE No. 25308-M. F. P. Newport Corporation, Ltd., Bankrupt. U. S. Govt. vs. Trustee and Re Petition to Security-First National Bank Re Foreclosure. Exhibit No. 5. Filed 11-23 1943. Ernest R. Utley, Referee. [R] [228]

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In the *Superior* Court of the United States

Southern District of California

Central Division

No. 25-308-M

In the Matter of

F. P. Newport Corporation, Ltd., a corporation,  
Bankrupt.

ORDER EXTENDING TIME TO FILE PETITION  
FOR REVIEW

Good Cause having been shown in the premises, the time limit to file a Petition for Review by the Security-First National Bank of Los Angeles from those certain

Findings of Fact and Conclusions of Law and Order re Payment of Federal Income Taxes for the calendar years of 1938 and 1939, the same being dated June 6th, 1944, is hereby extended for an additional period of thirty days, to and including the 15 day of July, 1944.

Dated: June 9, 1944.

ERNEST R. UTLEY

Referee in Bankruptcy

[Endorsed]: Filed Jun. 9, 1944 at ..... min past 10 o'clock a. m. Ernest R. Utley, Referee; K Clerk.

[Endorsed]: Filed Oct. 18, 1944. [54]

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[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S  
ORDER

Comes now the Security-First National Bank of Los Angeles, a national banking association, and files this, its Petition for Review of that certain Order made by Referee in Bankruptcy, Ernest R. Utley, Esq., and entered in the above entitled proceedings on the 6th day of June, 1944, ordering H. F. Metcalf, Trustee in Bankruptcy for the above named Bankrupt, to pay to the Collector of Internal Revenue income taxes assessed for the calendar years 1938 and 1939, and interest thereon, out of oil and gas royalties received or to be received by the Trustee in Bankruptcy from property, the record title to which stands in the name of Security-First National Bank of Los Angeles as Trustee under its Trust D 7224, and/or surface rentals received therefrom, which order further



provided, for the purpose of making said payments, that said Trustee in Bankruptcy may use any funds now on deposit in the Special Accounts carried in his name as said Trustee in Bankruptcy at the Security-First National Bank of Los Angeles and the Citizens National Trust & Savings Bank.

Said Order is contained in the files and records of the within matter, and is incorporated herein by reference, and made a [55] part hereof as though set out in full.

In this Petition for Review the Security-First National Bank of Los Angeles alleges that the Referee in Bankruptcy erred in his said Order of June 6, 1944, in the following respects:

### I.

That the Referee in Bankruptcy erred in ordering H. F. Metcalf, Trustee in Bankruptcy for the above named Bankrupt, to pay to the Collector of Internal Revenue of the United States the income taxes assessed for the calendar years 1938 and 1939, and interest thereon out of oil and gas royalties and surface rentals received or to be received by the said Trustee in Bankruptcy from properties, the record title to which stands in the name of Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, for the reason that under and by virtue of that certain Contract of January 12, 1937, as supplemented and modified, between the Security-First National Bank of Los Angeles, F. P. Newport Corporation, Ltd., and H. F. Metcalf as Trustee in Bankruptcy of F. P. Newport Corporation, Ltd., a Bankrupt, the said oil and gas royalties and surface rentals received or to be received by the said Trustee in Bankruptcy were sequestered for the payment of the indebtedness of said

Bankrupt Corporation to the Security-First National Bank of Los Angeles, the same being in excess of \$600,000.00 as of the date of said order, free of any recourse thereto by the Trustee in Bankruptcy for the payment of any costs and expenses incurred by him as such Trustee, and free of any claims thereto by any creditor of said Trustee in Bankruptcy, including the Collector of Internal Revenue and the United States Government for income taxes, and free of any General Creditor's claims in the Bankruptcy proceedings.

## II.

That the Referee in Bankruptcy erred in ordering H. F. Metcalf, Trustee in Bankruptcy for the above named Bankrupt, for the purpose of making said payment of income taxes for the calendar years 1938 and 1939, and interest thereon, to use any funds on deposit in the [56] special accounts carried in his name as said Trustee in Bankruptcy at the head office of the Security-First National Bank of Los Angeles, Sixth and Spring Streets, Los Angeles, California, and Citizens National Trust & Savings Bank, Los Angeles, California, for the reason that under and by virtue of that certain Contract of January 12, 1937, as supplemented and modified, said special accounts comprised and consisted only of the rents, issues and profits received or to be received by the said Trustee in Bankruptcy from properties, the record title to which stood in the name of Security-First National Bank of Los Angeles as Trustee under its Trust D 7224, and which amounts were sequestered for the payment of the indebtedness due from F. P. Newport Corporation, Ltd., to the Security-First National Bank of Los Angeles.

## III.

That the Referee in Bankruptcy erred in denying the Petition and Prayer of Security-First National Bank of Los Angeles that said Trustee in Bankruptcy be required to pay over to the said Bank the oil and gas royalties and surface rentals received, or to be received by the said Trustee in Bankruptcy from the properties the record title to which stands in the name of said Bank as Trustee under its Trust D 7224, for the reason that under and by virtue of said Contract of January 12, 1937, as supplemented and modified, the said oil and gas royalties and surface rentals received or to be received by said Trustee in Bankruptcy from said properties were sequestered for the payment of the indebtedness due from said Bankrupt corporation to the Security-First National Bank of Los Angeles.

## IV.

That the Referee in Bankruptcy erred in holding that any of the oil and gas royalties and surface rentals received or to be received by said Trustee in Bankruptcy from any of the properties, the record title to which is held by Security-First National Bank of Los Angeles as Trustee under its Trust D 7224, can be used for the [57] purposes of administration of the Bankrupt Estate of F. P. Newport Corporation, Ltd., so far as they relate to the payment of Federal Income taxes for the calendar years 1938 and 1939, and interest thereon, for the reason that under said contract of January 12, 1937, as supplemented and modified, said funds were sequestered for the payment of the indebtedness due from said Bankrupt Corporation to the Security-First National Bank of Los Angeles.

## V.

That the Referee in Bankruptcy erred in holding that as to the Security-First National Bank of Los Angeles, the said Trustee in Bankruptcy was, during the calendar years of 1938 and 1939, operating property of said Bankrupt, the record title to which is held by the Security-First National Bank of Los Angeles, within the meaning of Section 52 (a) of the Revenue Code, and Section 19.52-2 of Treasury Regulations 103, since the said Trustee in Bankruptcy's operation thereof was for liquidation purposes and as limited by said Contract of January 12, 1937, as supplemented and modified.

## VI.

That the Referee in Bankruptcy erred in holding that the net income received by said Trustee in Bankruptcy during the calendar years 1938 and 1939, respectively, from properties, the record title to which is held by Security-First National Bank of Los Angeles under its Trust D 7224, under and by virtue of said contract of January 12, 1937, as supplemented and modified, was subject to Federal Income tax within the meaning of Section 52 (a) of the Revenue Act of 1938, and of the Internal Revenue code, for the reason that under the provisions of said contract, as supplemented and modified, the said net income was sequestered for the payment of indebtedness owed by the Bankrupt Corporation to the Security-First National Bank of Los Angeles.

## VII.

That the Referee in Bankruptcy erred in holding that the properties, the record title to which is held by the Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, and [58] as security for the obligation owed by the Bankrupt Corporation to said Bank,

have been administered by said Trustee in Bankruptcy by and with the consent and approval of said Bank, and for the benefit of said Bank, for the reason that said Trustee in Bankruptcy's possession of said properties are for liquidation purposes only, as provided by the said Contract of January 12, 1937, as supplemented and modified.

### VIII.

That the Referee in Bankruptcy erred in holding that the income tax for the calendar years 1938 and 1939 was the result of the production of income, the full benefit and enjoyment of which was held by the Security-First National Bank of Los Angeles, for the reason that the income tax was levied against the said Trustee in Bankruptcy and not against the said Security-First National Bank of Los Angeles, and for the further reason that said income tax, by virtue of said Contract of January 12, 1937, as supplemented and modified, cannot be charged against oil and gas royalties and surface rentals received or to be received from properties, the record title to which is held by the said Bank.

### IX.

That the Referee in Bankruptcy erred in holding that the income taxes for the years 1938 and 1939 are incidental to said Bankruptcy administration, and a necessary part of the expense of operating, preserving, collecting and liquidating the properties and distributing the proceeds thereof, insofar as said Security-First National Bank of Los Angeles is concerned, for the reason that under the provisions of said Contract of January 12, 1937, as supplemented and modified, all of the oil and gas royalties and surface rentals received and to be received by said Trustee in Bankruptcy, which includes all sums in the special bank accounts standing in the name of said



Trustee in Bankruptcy, from properties the record title to which is held by the Security-First National Bank of Los Angeles, were sequestered for the payment of the indebtedness owed by said Bankrupt to said Bank. [59]

### X.

That the Referee in Bankruptcy erred in holding that Security-First National Bank of Los Angeles, having the full benefit of the income which resulted in the assessment of said taxes, should pay the taxes out of that income, for the reason that the tax assessed for the years 1938 and 1939 were assessed against the said Trustee in Bankruptcy and for his operations, and not against said Security-First National Bank of Los Angeles.

### XI.

That the Referee in Bankruptcy erred in holding that by the provisions of said Agreement of January 12, 1937, as supplemented and modified, the oil and gas royalties received from Universal Consolidated Oil Company, lessee of property, the title to which stands in the name of Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, can be used for the purpose of paying income taxes assessed against the Trustee in Bankruptcy and the Bankrupt Estate, for the reason that said contract, as supplemented and modified, provides that such income is sequestered for the benefit of the Security-First National Bank of Los Angeles, to be applied by said Bank on the indebtedness due it from said Bankrupt corporation.

### XII.

That the Referee in Bankruptcy erred in holding that if the funds on deposit in said special bank accounts, which comprises income collected from properties the title



to which stands in the name of the Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, are insufficient to pay said claim of the United States of America and the Collector of Internal Revenue for income taxes for the calendar years 1938 and 1939, plus interest thereon, such deficiency should be paid by the Trustee in Bankruptcy, out of oil and gas royalties when and as received by him from Universal Consolidated Oil Company, for the reason that such rents, issues and profits, by virtue of the provisions of said contract of January 12, 1937, as supplemented and modified, were sequestered for the payment [60] of the indebtedness due from said Bankrupt to the Security-First National Bank of Los Angeles.

That the points to be determined in connection with the Petition of the Security-First National Bank of Los Angeles to review that certain Order made by the Referee in Bankruptcy, Ernest R. Utley, Esq., and entered in the above entitled proceedings on the 6th day of June, 1944, are as follows:

### I.

Whether or not, under the provisions of Trust D 7224 of the Security-First National Bank of Los Angeles, and that certain contract of January 12, 1937, as supplemented and modified, any portion of the oil and gas royalties and surface rentals received, or to be received, by the said Trustee in Bankruptcy from properties, the subject matter of said Trust and Contract, as supplemented and modified, the record title to which stands in the name of Security-First National Bank of Los Angeles as Trustee under its Trust D 7224, can be used for the payment of income taxes assessed against the Trustee in Bankruptcy for the calendar years 1938 and 1939, or whether

the use of such rents, issues and profits is applicable only to payment on account of the indebtedness due from said Bankrupt Corporation to said Bank.

## II.

Whether or not the Security-First National Bank of Los Angeles can be deprived of a part of its security without its consent, for the purpose of payment of Federal Income taxes assessed against the Trustee in Bankruptcy for the calendar years 1938 and 1939.

## III.

Whether or not a referee in bankruptcy has any jurisdiction to charge the Security-First National Bank of Los Angeles, a secured creditor, or any of its security, and without its consent, with any portion of the Trustee's expenses of administration so far as they [61] relate to the payment of Federal Income Taxes assessed against the Trustee in Bankruptcy of said Bankrupt.

The general outline of the evidence, upon which the said order of Referee Utley of June 6, 1944, is predicated, is as follows:

That on September 24, 1943, there was filed in the above Bankruptcy Proceedings by the United States of America a Petition for Order to Show Cause why the Trustee in Bankruptcy should not be directed to pay 1938 and 1939, Federal Income Taxes and interest thereon. On the filing of said Petition an Order to Show Cause was issued by the said Bankruptcy Court directed to H. F. Metcalf as Trustee in Bankruptcy for F. P. Newport Corporation, Ltd., and Security-First National Bank of Los Angeles, a secured creditor of said Bankrupt, directing them and each of them to appear before this Court on September 30, 1943, then and there to show cause, if

any they had, why an order should not be made therein directing the Trustee to pay the 1938 and 1939 Federal Income taxes and interest thereon, from the funds or income of the above entitled bankrupt estate. Answers to said Petition and Order to Show Cause were filed by the said Trustee in Bankruptcy and said Security-First National Bank of Los Angeles. Copies of said Petition, Order to Show Cause and said Answers are on file in the above entitled proceedings, and are incorporated in this Petition by reference, the same as though fully set out herein. That the said matter came on for hearing before said Bankruptcy Court on September 30, 1943, and was thereupon and from time to time thereafter continued to November 23, 1943.

On October 19, 1943, there was filed in the above bankruptcy proceedings by the Security-First National Bank of Los Angeles a Petition for an Order to Show Cause why the Trustee in Bankruptcy should not be directed to pay to said Security-First National Bank of Los Angeles impounded oil royalties, rents, issues and profits received by the said Trustee in Bankruptcy from properties, the record title to which stands in the name of said Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, [62] to be applied on the secured indebtedness of said Bank, under and pursuant to the terms and provisions of said Trust D 7224 and that certain Contract of January 12, 1937, as supplemented and modified. being between the Security-First National Bank of Los Angeles, F. P. Newport Corporation, Ltd., and H. F. Metcalf, as Trustee in Bankruptcy of the F. P. Newport Corporation, Ltd., and duly approved by the said Bankruptcy Court. On the filing of said Petition, an Order to Show Cause was issued by the said

Bankruptcy Court directed to H. F. Metcalf, as Trustee in Bankruptcy herein, directing him to appear before this Court on October 28, 1943, then and there to show cause, if any he had, why an order should not be made therein, granting the prayer of said Bank's Petition. Answers to said Petition and Order to Show Cause were filed by said Trustee. Copies of said Petition, Order to Show Cause and Answer of said Trustee in Bankruptcy, Contract of January 12, 1937, as supplemented and modified, are on file in the above entitled proceedings, and are incorporated in this Petition by reference, the same as though set out here in full.

That said matter came on for hearing before said Bankruptcy Court on October 28, 1943, and was thereupon, and from time to time thereafter continued to November 23, 1943.

On November 23, 1943, the said Petition of the United States of America and the said Petition of the Security-First National Bank of Los Angeles and the said answers thereto came on for hearing before Referee in Bankruptcy, Ernest R. Utley, Esq.

The following documents were admitted in evidence (copies of said documents are in the records and files of the above entitled matter, and are incorporated herein by reference as though fully set out herein):

U. S. Government's Exhibit No. 1,

Agreement of January 12, 1937, by reference  
Modification of Supplemental Agreement dated  
October 31, 1937; Stipulation of October 13,  
1937; and Stipulation of October 9, 1937. [63]

U. S. Government's Exhibit No. 2—

By reference, Opinion of Circuit Court of Appeals in connection with the United States Tax claims.

U. S. Government's Exhibit No. 3—

Judge McCormick's Order pursuant to Mandate of Circuit Court of April 8, 1943, by reference.

Trustee in Bankruptcy's Exhibit No. A—

By reference, all Petitions and Orders of the Trustee regarding the payment of funds to the Security-First National Bank of Los Angeles.

Trustee in Bankruptcy's Exhibit No. B—

By reference, reports and accounts of Trustee, First, Second and Third.

Trustee in Bankruptcy's Exhibit No. C—

By reference, oil and gas lease between the Trustee and Universal Consolidated Oil Co., dated January 14, 1938.

Trustee in Bankruptcy's Exhibit No. D—

By reference, all orders re payment of administration expense.

Security-First National Bank of Los Angeles, Exhibit No. 1—

By reference, Declaration of Trust D 7224.

Security-First National Bank of Los Angeles' Exhibit No. 2—

By reference, Findings and Order of Referee Utley, and Order of Judge McCormick, approving said Contract of January 12, 1937, as supplemented and modified.



Security-First National Bank of Los Angeles' Exhibit No. 3—

By reference, Decision of 9th Circuit Court of Appeals, to be found in 98 Federal 2nd, 453.

Security-First National Bank of Los Angeles Exhibit No. 4—

Letter dated July 30, 1943, to H. F. Metcalf, Trustee. [64]

Security-First National Bank of Los Angeles' Exhibit No. 5—

Letter dated December 12, 1941, to Security-First National Bank of Los Angeles from Bailie, Turner and Lake.

The matter was submitted to the Referee for decision on the 23rd day of November, 1943.

On the 6th day of June, 1944, the Referee signed and filed his Findings of Fact, Conclusions of Law and Order re Payment of Federal Income Taxes for the calendar years 1938 and 1939. Said Findings of Fact, Conclusions of Law and Order are contained in the files and records of the above entitled proceedings, and are incorporated herein by reference and made a part hereof the same as though set out in full.

That on June 9, 1944, Referee Ernest R. Utley signed an Order extending time of the Security-First National Bank to file its Petition for Review of the said Order of June 6, 1944, for an additional period of thirty days, to and including the 15th day of July, 1944. Said Order is contained in the files and records of the above entitled



proceedings, and is incorporated herein by reference and made a part hereof the same as though set out in full.

That a copy of the transcript of the evidence will be forwarded to the District Court, in connection with the Referee's Certificate and as a part of his record.

Wherefore, your petitioner prays that said Order of June 6, 1944, be reviewed and reversed, and that the Trustee in Bankruptcy be directed to pay all sums held in said special bank accounts and comprising rents, issues and profits collected and to be collected from properties, the record title to which is held by Security-First National Bank of Los Angeles, as prayed for in said Petition of said Security-First National Bank of Los Angeles.

Dated: July 11, 1944.

SECURITY-FIRST NATIONAL BANK OF LOS  
ANGELES

By R. T. ADAMS  
Assistant Vice-President  
Petitioner

W. C. SHELTON & GEORGE W. BURCH

By W. C. SHELTON  
Attorneys for Petitioner [65]

[Verified July 11, 1944.] [66]

Received copy of the within Petition this 12 day of July, 1944. Edmund Nelson, Attorney for Bank of America.

Received copy of the within Petition this 12 day of July, 1944. Craig & Weller, Attorneys for Certain Creditors.

Received copy of the within Petition this 12th day of July, 1944. L. M. Cahill, by D. Poe, Attorney for F. P. Newport Corporation, Ltd.

Received copy of the within Petition this 12 day of July, 1944. Hiram E. Casey, Attorney for Certain Creditors.

Received copy of the within Petition this 12 day of July, 1944. Bailie, Turner & Lake, by F. C. G., Attorneys for H. F. Metcalf, Trustee in Bankruptcy.

Received copy of the within Petition this 12th day of July, 1944. Nourse & Jones, Paul Nourse, Attorney for Certain Creditors.

Received copy of the within Petition this 14th day of July, 1944. Charles H. Carr, E. H., United States Attorney; Eugene Harpole, Special Attorney; Attorneys for United States.

[Endorsed]: Filed Jul. 14, 1944, at 35 min. past 9 o'clock a. m. Ernest R. Uteley, Referee; R, Clerk.

[Endorsed]: Filed Oct. 18, 1944. [67]

[Title of District Court and Cause.]

## REFEREE'S CERTIFICATE ON REVIEW

To the Honorable Paul J. McCormick, Judge of the  
United States District Court, Southern District of  
California, Central Division.

I, Ernest R. Utley, Referee in Bankruptcy to whom the  
proceedings in this matter were referred, do hereby  
certify:

That on January 12, 1937, F. P. Newport Corporation,  
Ltd., a corporation, was duly adjudicated a bankrupt and  
that proceedings in relation to said bankruptcy estate  
were duly referred to this Referee.

That on March 18, 1937, H. F. Metcalf was duly ap-  
pointed Trustee in Bankruptcy of said bankrupt estate,  
duly qualified as such, and ever since has been and now  
is the duly appointed, qualified and acting Trustee in  
Bankruptcy of said estate, and that ever since said date,  
and as said Trustee, said H. F. Metcalf has been in pos-  
session and control of all of the properties and assets of  
said estate, including those hereinafter more specifically  
referred to.

That on July 22, 1940, Nat Rogan, as the then United  
States Internal Revenue Collector of the Sixth Collection  
District of California, duly filed a claim in said proceed-  
ings on behalf of The United States of America for \$19,-  
363.65 asserting thereby that there was due and owing to  
The United States of America from and by said H. F.  
Metcalf as said Trustee in Bankruptcy the said amount  
as income tax determined [6] and assessed by the Com-  
missioner of Internal Revenue for the taxable years 1938  
and 1939 on what the Commissioner determined to have

been income of said H. F. Metcalf as said Trustee in Bankruptcy.

That on April 8, 1943, an order was signed in these proceedings by the Honorable Paul J. McCormick, as Judge of the above entitled Court, allowing said claim in full with interest thereon as provided by law; that said claim has not nor has any part thereof been paid.

That on September 24, 1943, there was filed in these proceedings by The United States of America a petition praying that an order be issued by this Court addressed to H. F. Metcalf as said Trustee in Bankruptcy and Security-First National Bank of Los Angeles, directing them to appear and show cause, if any they had, why the Trustee in Bankruptcy should not be ordered to pay said taxes with interest thereon; that said petition, among other things, set up the fact that said Bank claimed an interest in and to the right to receive all of the available funds of the above entitled bankrupt estate.

That on the filing of said petition an order to show cause was issued by the Referee directed to said Trustee in Bankruptcy and said Bank requiring them to appear before the Referee on September 30, 1943, then and there to show cause why an order should not be made and entered therein directing the said Trustee to pay said taxes. That said petition and order to show cause were duly served on said parties and answers thereto were filed by said Trustee in Bankruptcy and said Bank.

That the answer of said Trustee set up, among other things, that he had no funds with which to pay such tax unless he were permitted to use funds on deposit which represented royalties from Universal Consolidated Oil Company under an oil and gas lease hereinafter referred

to. That the answer of said Bank asserted, among other things, that the Bank had the first and prior right to receive from said bankrupt estate and said Trustee in Bankruptcy any and all funds on hand or which might thereafter come into possession of said Trustee as royalties under said oil and gas lease or rentals for any of the property of this estate, title to which property stands in the name of said Bank as security for payment of an obligation owing to it by the Bankrupt and prayed for an order directing the Trustee in Bankruptcy to pay to said Bank the said impounded oil and gas funds. [7]

That the hearing on said petition and order to show cause was continued from time-to-time until November 23, 1943, at which time the said matter came on regularly for hearing before said Referee. Oral and documentary evidence was offered and received and a brief summary of said evidence is as follows:

That on or about March 1, 1930, the bankrupt corporation borrowed from Security-First National Bank of Los Angeles the sum of \$760,000 which is the same debt as that mentioned in the contract of January 12, 1937, more particularly hereinafter mentioned including accretions thereto by way of accumulated interest, added borrowings, advances for taxes, the Bank's trustee fees, and the expenses of said Bank as such trustee.

That on or about March 1, 1930, said bankrupt corporation conveyed to said Security-First National Bank of Los Angeles title to certain real property by four (4) grant deeds. That concurrently with the execution of said deeds the said Bank executed and delivered to the bankrupt corporation a written declaration of trust dated March 1, 1930, now known and referred to as Trust D-7224 (formerly SS 70401), by the terms of which it

acknowledged that it had received the conveyance of said property as Trustee with power of sale and as security for the payment of said loan and as security for all advances, costs, trustee's fees and expenses advanced and incurred under the terms of said declaration of trust.

That thereafter and prior to the adjudication in bankruptcy additional properties were transferred by said bankrupt corporation to said Bank as such Trustee under and pursuant to the terms of said declaration of trust. The property so transferred to said Bank, record title to which is now held by it under and pursuant to the terms of said declaration of trust, consists of parcels the bulk of which are unsubdivided and are situate mostly in the County of Los Angeles and include nine acres hereinafter more specifically referred to and situate on what is known as Channel No. 3 of the Long Beach Harbor. That said Trustee in Bankruptcy, on his qualification as such Trustee, came into possession of all of the properties of said bankrupt estate including the properties, record title to which was held by said Bank as above noted.

That said declaration No. D-7224 provided, among other things, as follows:

“Article Sixteenth: All proceeds and avails arising from the [8] rents, issues, leases and sales of the Trust property, or otherwise, shall be paid to and received by the said Trustee, and said Trustee shall disburse all such proceeds and avails as follows:”

\*      \*      \*      \*      \*      \*      \*

“III. All proceeds and avails arising from the leases and rentals of said property so received by the said Trustee shall be credited to the General Fund.”

\*      \*      \*      \*      \*      \*      \*



“VII. Out of the moneys credited to the General Fund the Trustee shall pay:

1st: Its accrued costs, fees and expenses as hereinafter determined, unless they be sooner paid;

2nd: The taxes, assessments and installments of principal and interest on street bonds assessed or imposed on or against said property then due and unpaid, not payable by the purchaser thereof from the said Trustee.

“Should the moneys in the hands of the Trustee available for that purpose be insufficient to pay said taxes and assessments, and installments of the principal and interest on the street bonds when due, then the Beneficiary by its ratification of this Declaration of Trust, covenants and agrees to immediately pay any deficiency in the amount due on said taxes, assessments and bonds to the Trustee.

“3rd: Any improvements upon the Trust property, upon the order of the Beneficiary hereunder, or its duly authorized Agent, and/or as contracted by the Trustee as provided for in Article Fourteenth hereof;

“4th: Interest, as and when due, on any note secured hereby, if there are not sufficient moneys in the Interest Fund with which to pay the same;

“5th: Any liens or incumbrances covering the property sold, not payable by the purchaser thereof from said Trustee;

“6th: Principal upon any note secured hereby in favor of the Payee after the due date thereof; and [9]

“7th: Subject to the foregoing provisions, and provided the Beneficiary is not in default in any manner under the terms of this Declaration of Trust, all of the balance of the moneys received by the said

Trustee shall be applied, disbursed and paid in convenient monthly installments to F. P. Newport Corporation, Ltd., a Delaware Corporation, the Beneficiary hereunder, its successors or assigns."

That prior to the adjudication in bankruptcy of said F. P. Newport Corporation; the said Bank as trustee under its declaration of trust did, in accordance with the provisions of said declaration of trust, declare the entire unpaid principal balance on the obligation secured by said properties due and fixed the date for the foreclosure sale of said properties for March 29, 1935.

That on March 19, 1935, an involuntary petition was filed against the said Bankrupt corporation; that on or about March 25, 1935, H. F. Metcalf was duly appointed Receiver in Bankruptcy of all of the properties and assets of the above named corporation including the property record title to which was held by said Bank as hereinabove stated. That on the filing of said petition and the appointment and qualification of said Receiver, an Order was duly made in said proceeding restraining said Bank from proceeding with the foreclosure sale of said property. That from time to time thereafter and prior to January 12, 1937, the Bank made application to the Court for leave to foreclose. That the Court, over the objections of said Bank, continued the restraining order in full force and effect until the adjudication in bankruptcy as hereinbefore mentioned.

That subsequent to March 25, 1935, and prior to the adjudication in bankruptcy of said corporation, extensive negotiations and conferences were had between said Bank, said Receiver, and their respective counsel and other interested parties in an effort to devise a method for the liquidation of the properties record title to which was

held by said Bank pursuant to the terms of said Trust, and for an orderly and equitable payment of the indebtedness owing to said Bank. That following said conferences and negotiations an agreement in writing, dated January 12, 1937, was made and executed by said **bankrupt corporation**, the Bank and the Receiver, which agreement was subsequently executed by the Trustee in Bankruptcy and thereafter supplemented and modified in writing. That said agreement, supplement, and modifications [10] thereof were duly ratified and confirmed by the Honorable Paul J. McCormick, Judge of said District Court.

That thereafter an appeal from the order so approving and ratifying said agreement, supplement thereto and modifications thereof, was taken to the United States Circuit Court of Appeals (9th Circuit) which last mentioned Court duly affirmed the said order. That a petition for a Writ of Certiorari to review the said order was filed with the United States Supreme Court and was duly denied.

That by the terms of said agreement as so supplemented and modified, it was stipulated, among other things, that the principal amount of the indebtedness due to said Security-First National Bank of Los Angeles amounted to \$1,304,918.77, and should be payable in installments as therein provided, and that all indebtedness due said Bank should be paid on or before September 7, 1940. That the said agreement, as modified, among other things, provides:

"That while the said Declaration of Trust No. D-7224 and the contract of January 12, 1937 provide expressly that all moneys from Sales and Leases of Property in said Trust shall be paid to and be received by the Bank, it is, nevertheless, agreed, in order to comply with the bankruptcy law requiring

that all bankruptcy funds be accounted for by the Trustee and be disbursed by him only upon checks or warrants countersigned by the Referee, that all such moneys shall be paid to said Trustee in Bankruptcy, and, until the indebtedness due the Bank has been paid, shall be by him forthwith paid over in full to the Bank, to be distributed in accordance with the terms of said Trust No. D-7224 and the agreement of January 12, 1937, as modified hereby.

“Recognizing that the Bank has a prior right to the moneys in the preceding paragraph mentioned until the indebtedness due it has been paid, it is therefore expressly understood and agreed that such funds or moneys so paid to and received by the said Trustee in Bankruptcy from Sales or Leases or other disposition of property under said Trust shall, until the indebtedness due the Bank has been paid and except as hereinafter provided, be, while in his possession impressed with the lien of the Declaration of Trust securing the indebtedness owing to the Bank, and [11] such funds or moneys shall be deposited by the Trustee in Bankruptcy in a separate bank account and not commingled with any other funds of the Bankrupt Estate, and shall be deemed earmarked for application on the Bank’s indebtedness as provided in said agreement of January 12, 1937, and this supplement thereto, and except as in said agreement and said supplement provided, shall not, until the indebtedness due the Bank has been paid, become any part of the general assets of the Bankrupt Estate. No provision of said agreement of January 12, 1937, or this supplement thereto is made or entered into, directly or indirectly, for the purpose of fixing the amount of the fees or

other compensation to be paid to any party in interest or any attorneys of any party in interest in this bankruptcy proceeding, for services rendered in connection therewith or otherwise, and the fixing and determination of any fees or compensation to be paid to any one whomsoever from the assets of this Bankrupt Estate, is, in accordance with the law, left entirely to the determination of the court having jurisdiction of this bankruptcy proceeding, unaffected by any provision, term or condition, express or implied, of said contract of January 12, 1937, or of this supplement thereto."

That thereafter and with the approval of this Court said Trustee in Bankruptcy and said Bank and Bankrupt as Lessors did on or about January 14, 1938, make and enter into a lease with the Universal Consolidated Oil Company as lessee under and by virtue of which there was let to said Lessee that portion of the real property record title to which stood in the name of said Bank and hereinbefore referred to as the 9-acre parcel situate on Channel No. 3 Long Beach Harbor for the purpose of producing oil and gas on said property. That the Lessee went upon said property, discovered oil and gas, and ever since has been producing oil and gas therefrom in commercial paying quantities. That the bonuses and oil and gas royalties payable under the terms of said lease have been paid to said Trustee in Bankruptcy and pursuant to order of the Court approving said agreement, supplement thereto and modifications thereof, have been deposited in a special account carried in the name of said Trustee in Bankruptcy at the Head Office of said Security-First National Bank [12] of Los Angeles. Thereafter the oil and gas royalties, including bonuses, actually paid to said Trus-



tee in Bankruptcy during the years 1938 and 1939 were paid to said Bank, with the consent of said Bank, by the Trustee in Bankruptcy on orders of this Court to cover: first, taxes assessed against the properties record title to which was held by said Bank as trustee under its said Trust; second, costs of engineering services for checking oil and gas production on the property so leased; third, to apply on account of interest; and fourth, to apply on account of principal owing on the secured debt to said Bank.

That said Security-First National Bank of Los Angeles received during the years 1938 and 1939 a total of \$451,851.01 from oil and gas royalties paid to it by said Trustee in Bankruptcy of which \$97,665.88 was applied by said Bank on interest owing to it, \$59,010.43 on taxes assessed against the properties record title to which stands in the name of said Bank as trustee under its said Trust. \$5,903.23 for expenses or cost of checking production of oil and gas and the balance of \$289,271.47 on the principal of the secured indebtedness owing to said Bank.

That the Commissioner of Internal Revenue determined that the Trustee had received during the calendar year 1938 the gross sum of \$259,578.93 of which \$50,000 represented bonuses received under said lease and \$195,517.65 represented oil and gas royalties. The Commissioner allowed expenses and deductions totaling \$172,512.51, leaving a net income as determined by the said Commissioner of \$87,066.42 for said calendar year 1938.

That the Commissioner of Internal Revenue determined that the Trustee had received during the calendar year



1939 the gross sum of \$232,571.40 of which \$206,333.36 represented oil and gas royalties received under said lease. The Commissioner allowed expenses and deductions of \$202,282.41 leaving, according to the Commissioner's determination, a net income for 1939 of \$30,288.99.

That the Trustee in Bankruptcy does not now have, nor has he had at any time since the assessment of said income tax, any funds with which to pay the said assessment unless he is authorized to pay it from the oil and gas royalties received by him under said lease with Universal Consolidated Oil Company.

That Security-First National Bank of Los Angeles asserts that the whole of said oil and gas royalties must be paid to it without deduction and that its right thereto [13] is superior to the right of the United States of America.

That said agreement of January 12, 1937, provides as follows:

"Disbursement of the Special Fund. Out of the Special Fund, the Bank shall pay all taxes, assessments, insurance, interest and other charges and expenses of said Trust No. D-7224 not theretofore paid by the Trustee in Bankruptcy. After payment out of said Special Fund of all current interest, taxes, assessments and Trust Expense, and after first setting aside in said Special Fund a reserve sufficient to pay all interest, taxes, assessments and Trust Expenses for one additional year, the remainder of the money in said Special Account shall be paid over to the Trustee in Bankruptcy."

“All income from oil, in the nature of bonuses, rentals and royalties from any of the properties held by the Bank in Trust, so paid to the Bank, shall be placed by the Bank in a Special Oil Account.

“The funds in said Account shall be available to the Trustee in Bankruptcy for the purpose of making up any deficiency in the ‘Special Fund,’ to pay interest, taxes, assessments and expenses, as hereinabove provided, in order to obviate a default; provided, however, that all sums taken from said Oil Account for such purpose shall be repaid to said Oil Account from moneys thereafter coming into Special Fund and not needed to pay other or additional interest, taxes, assessments, or expenses then due.

“Except as herein provided, all amounts in said account, shall be applied on September first and March first of each year, or on such other dates as shall be mutually agreed upon by the Trustee in Bankruptcy and the Bank, on the principal of said indebtedness and shall be considered as cash applied on the quotas of principal as hereinbefore set forth.”

That said Trustee in Bankruptcy has on deposit in said special account at the Head Office of said Security-First National Bank of Los Angeles moneys received from said oil and gas royalties approximating \$21,000. That said Trustee in Bankruptcy also has on deposit in a special account carried in his name with the Head Office [14] of Citizens National Trust & Savings Bank of Los Angeles funds totaling \$1,495.02 which represent surface rentals collected by him from portions of the properties of this estate record title to which stands in the name

of said Bank as security for said obligation. That said Bank claims and asserts that it is entitled to receive said funds without deduction and that its right thereto is superior to any right the United States Government might have.

From the foregoing facts, the Referee determined that the income tax for the calendar years 1938 and 1939 was the result of income the full benefit and enjoyment of which was had by said Security-First National Bank of Los Angeles and that said income taxes are incident to the administration of this estate and a necessary part of the expenses of operating, preserving, collecting and liquidating the properties and distributing the proceeds thereof and that said Bank having had the full enjoyment of said income which resulted in the assessment of said tax should pay the same out of such income, since such taxes were part of the cost of producing that income; and that the Trustee should be directed to pay said taxes out of said oil and gas royalties or surface rentals.

The Referee determined that it was advisable to defer a determination of the question of whether or not said income could be used for the payment of any other expense of administration since the funds available are not sufficient to pay said taxes and accrued interest.

The Referee made Findings of Fact, Conclusions of Law, and Order directing that said taxes be paid by the Trustee in Bankruptcy out of said funds or other funds received from the same sources, which Findings, Conclusions and Order are dated June 6, 1944.

That a petition to review said order was regularly presented within the time allowed by law by Security-First National Bank of Los Angeles.

The Referee submits herewith the following instruments:

1. Original petition of the United States of America hereinbefore mentioned, and order to show cause thereon.
2. Answer of Security-First National Bank of Los Angeles and answer of the Trustee in Bankruptcy herein.
3. Findings of Fact, Conclusions of Law and Order of the Referee [15] dated June 6, 1944, entitled: Findings of Fact, Conclusions of Law, and Order re Payment of Federal Income Taxes for Calendar Years 1938 and 1939.
4. Order Extending Time to File Petition for Review.
5. Petition for Review of Referee's Order filed by Security-First National Bank of Los Angeles.
6. Transcript of the record in the matter of the United States of America, appellant, v. H. F. Metcalf, United States Circuit Court of Appeals No. 10130, which was received in evidence and marked as Exhibit for the purpose of introducing by reference the following:
  - (a) Findings of Fact, Conclusions of Law and Order Disallowing Claim of Collector of Internal Revenue, and Order Vacating and Setting Aside Prior Order Disallowing Claim of Collector of Internal Revenue (Tr. pp. 28-50 inclusive).

- (b) Agreement dated January 12, 1937 (Tr. pp. 61-78 inclusive).
  - (c) Supplement agreement (Tr. pp. 79-85, inclusive).
  - (d) Stipulation re modification of contract or agreement of January 12, 1937 (Tr. pp. 86-89, inclusive).
  - (e) Stipulation re modification of supplement agreement dated August 31, 1937 (Tr. pp. 89-94, inclusive).
  - (f) First Report and Account current of H. F. Metcalf, Trustee in Bankruptcy herein (Tr. pp. 94-110, inclusive).
  - (g) Second Report and Account Current of H. F. Metcalf, Trustee in Bankruptcy herein (Tr. 110-118, inclusive).
  - (h) Supplement to Second Report and Account Current of H. F. Metcalf, Trustee in Bankruptcy herein (Tr. 119-126, inclusive).
  - (i) Third Report and Account Current of H. F. Metcalf, Trustee in Bankruptcy herein (Tr. pp. 126-138, inclusive).
  - (j) Oil and Gas Lease (Tr. pp. 149-184, inclusive).
7. The Fourth, Fifth and Sixth Reports and Accounts Current of H. F. Metcalf, Trustee in Bankruptcy herein. [16]
8. Findings and order of Referee approving contract of January 12, 1937, as supplemented and modified. (The order of the Honorable Paul J. McCormick approving said contract, supplement and modifica-

tions is on file in the office of the Clerk of said Court and is not a part of this record of the Referee that can be transmitted with this certificate.)

9. Letter dated July 30, 1943, addressed to H. F. Metcalf, as Trustee, (Bank's Exhibit No. 4).
10. Letter dated December 12, 1941, addressed to Security-First National Bank of Los Angeles (Bank's Exhibit No. 5).
11. Copy of Trust No. D-7224. (See Transcript of Review, p. 178, Bank's Exhibit No. 6.)
12. Transcript of proceedings had before the Referee in this matter.

The orders of the Referee directing payment of oil and gas royalties to said Bank from time-to-time and allowing expenses of administration were introduced in this proceeding by reference. These orders are not attached as it appears no issue was made concerning them. If desired, they can be transmitted.

Dated this 18 day of Oct., 1944.

ERNEST R. UTLEY

Referee in Bankruptcy

[Endorsed]: Filed Oct. 18, 1944. [17.]



[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF TESTIMONY  
AND PROCEEDINGS IN RE: UNITED STATES  
OF AMERICA VS. TRUSTEE.

Los Angeles, California. Tuesday, November 23,  
1943. 10:00 o'clock A. M. session.

The Referee: We will take up the F. P. Newport matter. Which one of the three matters do you wish to take up first, gentlemen?

Mr. Nelson: Your Honor, please, I would like to file at this time an objection on behalf of the Bank of America as an unsecured creditor to the petition of the Security-First National Bank for leave to foreclose. I have served the petition on counsel for the Security-First National Bank and on counsel for the Trustee.

The Referee: Very well. It may be filed.

Mr. Cahill: At this time I desire to file objections to the petition for leave to foreclose, and answer of the bankrupt to said petition.

The Referee: It may be filed. Any other appearances in this matter other than Mr. Cahill and Mr. Nelson?

Mr. Casey: I appear on behalf of the creditors I represent as power of attorney and also the Los Angeles Investment Company. The power of attorney runs to Mr. Powell and Mr. Flint asked if I would make the appearance on his behalf. I join in the objection of the Bank of America to the petition.

Mr. Anderson: Your Honor please, I appear on behalf of Mrs. Cameron who is a creditor to the extent of some \$6,000. [3\*] She is a resident of England and I have not heard from her but I desire to make an appearance in her behalf.

The Referee: Very well, Mr. Anderson.

Mr. Thompson: On behalf of the Main Street Company, E. W. Thompson for Paul Nourse, and we join in the objection to the petition to foreclose.

Mr. Keleher: On behalf of the creditors Craig and Weller represents, one of them the Los Angeles Times, I object to the granting of the petition for foreclosure in the interests of those creditors.

The Referee: You are appearing for the Security-First National Bank?

Mr. Shelton: Yes, and I desire to have the record show as associated with me George W. Burch.

The Referee: Mr. Lynch, you are here for the Trustee?

Mr. Lynch: Yes.

The Referee: And Mr. Harpole for the United States Government?

Mr. Harpole: I am here for the United States in connection with income taxes. I suppose that may be indirectly involved in the foreclosure proceeding.

The Referee: Do you wish to take that matter up before taking up the petition to foreclose?

Mr. Shelton: It is my suggestion the petition of the United States Government for the payment over of funds in liquidation of certain income taxes which have been litigated [4] between the Government and the Trustee

and found to be due the Government, and the petition of the Security-First National Bank of Los Angeles for leave to foreclose and secondly for leave to pay over the impounded funds should be taken up concurrently and at the same time. We have all practically agreed, that is I think Mr. Lynch, Mr. Harpole and myself, that the matter will be submitted to your Honor on briefs and much of the evidence which goes to the validity of the claim of the United States Government for the payment out of these impounded funds in opposition to the secured creditor, the Security-First National Bank of Los Angeles, will involve the same evidence which will be directed toward its request to have the funds paid over to it, so that is my suggestion, that we introduce the evidence concurrently. I do not feel it calls for a long and protracted hearing for the introduction of evidence. - Mr. Lynch's office has signed a stipulation as to certain of the basic facts in this matter and this proceeding of course is a proceeding directed against the Trustee in Bankruptcy as being the only party, and not against the general unsecured creditors. They are not parties to this proceeding other than by courtesy of the Court, and the same thing is true as to the petition for leave to foreclose. I do not think any of them are taking any part in the controversy between the United States of America and the bank, as to who is entitled to the proceeds of the oil lease in priority. [5]

The Referee: They might be interested in that question. I can conceive of a creditor being interested in knowing whether the unsecured claim of the bank would be paid or the United States Government be paid. Are there any of counsel who represent interests here interested in that question to such an extent you wish to enter an appearance in that matter on the question of the tax?

Mr. Nelson: I think we are interested in the solution or answer to that question. I have so alleged in the objection to the petition.

The Referee: Well, is it agreed between all of counsel these matters may be heard as one matter consolidated?

Mr. Shelton: We have never had any definite agreement on that but I think for the purposes of saving time it would be wise.

The Referee: I can appreciate Mr. Harpole's position in the event of a review, he might not wish to encumber the record or other matters than he is concerned with.

Mr. Harpole: That is so, and it might be there would be a review taken in the foreclosure proceeding and the Government wouldn't wish to be carried into that and it would be if it was consolidated for trial.

Mr. Nelson: On that point I have stated as an objection to the petition of the Security-First National Bank to foreclose that the conflict does exist between the Government [6] on the tax claim and the Security-First National Bank with reference to the right to have certain funds applied either for taxes or on the Security-First National Bank loan, and that that is a matter vital to the position of the Security-First National Bank because if certain revenues which have been applied and which prospectively may continue to be applied on its loan are subject to the tax lien that definitely affects the ability of the bankrupt to pay off the Security Bank lien. I think it is one of the matters to be determined before the Court grants any leave to foreclose or considers that matter, at least to the extent until we know what the tax determination is and who has the better right to the funds and we do not know what the ability of the estate to pay

off the lien of the bank is. It may be affected to the extent of two hundred thousand dollars.

Mr. Shelton: There is no question but what there is a controversy whether the Government or the bank is first paid, and we are in court insisting our petition be heard and we seek in the same petition the right to have this very money the Government is asking for to be paid over to us. There are two petitions before your Honor and there is a fund now I think of about \$16,000—

Mr. Lynch: \$28,000.

Mr. Shelton: The Government wants it and the Security-First National Bank wants it.

The Referee: One of your petitions is to pay over this [7] money and the other is the petition for leave to foreclose?

Mr. Shelton: That is right, in the same petition. First, for leave to foreclose and second, to pay over these impounded funds. So you cannot answer the bank's claim without answering the Government's claim, and to that extent they overlap but it does not seem to me there should be any great difficulty in the introduction of testimony. For instance, the records and files of this bankrupt which start from its very outset, and particularly commencing with the contract that was made in modification of the deed of trust, that is all part of the evidence in the Government proceeding as well as ours.

The Referee: Why not do this, Mr. Shelton? I don't know that the matter of the United States Government versus the Trustee and so forth is on the calendar but why not hear that, get the evidence in on that question and then take up the other?



Mr. Harpole: We will be just duplicating evidence. The same records and files that sustain our position for the United States Government sustains the position of the bank.

Mr. Anderson: Why not stipulate the evidence offered on the one question can be considered on the other, without repetition.

Mr. Nelson: We will agree to that.

The Referee: Mr. Harpole would not want to agree all evidence on the foreclosure angle might be considered as part of his. [8]

Mr. Nelson: No, but we could stipulate the other way around.

The Referee: Yes.

Mr. Lynch: As a practical matter the Court will find when we get into the introduction of testimony and evidence that practically all the evidence that will go in on the bank's matter will be relevant and be introduced on the petition of the Government.

Now, I want to call the Court's attention to one thing, and that is this that the bank has filed a petition not only to foreclose but a petition in which they ask the Trustee be directed to pay over to them certain oil funds now impounded in the oil account and certain additional funds which are not revenues from the Universal Consolidated Gas and Oil lease but revenues from this property, impounded in a separate account. The Government insists those very same funds be paid over to it, so necessarily the Court must determine the petition of the Government as to their right to obtain those funds along with and concurrently with the petition of the bank to obtain those very same funds, so it is to that extent that the cases are



identical, and I am inclined to believe the evidence introduced in one will be practically the same as on the other.

Mr. Harpole: With this difference, your Honor. The claim of the Government is here as an expense of administration in this bankruptcy case. The claim of the bank and [9] of the other creditors are, as far as I can tell from what has been said in the court room and from reading the petition I received, claims that are true claims, that is, they were debts due at the time the proceeding started.

Mr. Lynch: That makes no difference so far as the practical problem is concerned because we have no funds with which to pay the Government claim, that is, to pay this item of administration expense, namely the income tax, unless that can be paid out of the very fund the bank insists they have a prior right to receive. Necessarily the two must be concurrently determined.

Mr. Cahill: My analysis of the suggestion made by counsel for the Security-First National Bank is that in effect he proposes at this time the Court make an order in effect consolidating for trial two totally unrelated matters, and that being the conception on behalf of the bankrupt I must object; in objecting I desire to point out to your Honor we are going to have trouble and difficulty enough here on our defense to the objections to the petition to foreclose and we do not want to be involved in what to us at this time is a collateral matter, that is the matter between the Security-First National Bank and the Government as to where a portion of the funds of the bankrupt estate shall be disbursed. That matter while of extreme importance on the aspect that Mr. Nelson has indicated, that it might mean \$200,000 one way or the other to the bankrupt [10] estate is important, but who gets it

finally between the two parties is of little importance, other than the aspect I mentioned, to the bankrupt or unsecured creditors or I think to the Trustee. So for that reason I object and in objecting I point out to your Honor I think if the Court would make an order of consolidation I think the order would be legally improper.

The Referee: I can see a very good reason why in Mr. Harpole's matter, that is, the United States Government matter, he would not want to be involved in a record that might deal in matters in which he would not be interested on review. I think I will hear the matter of the United States Government versus the Trustee first and after that if counsel wishes to stipulate that some or all of that matter may be considered on the other matter very well; otherwise, certain portion of it that may be material will have to be offered later. We will proceed first in the United States of America versus Trustee.

Mr. Harpole: Does the Court wish a statement at this time?

The Referee: I think I am pretty fairly well familiar with the situation, Mr. Harpole. The Court is aware of the litigation on the tax question and the holding that the Trustee is liable and that the United States is entitled to tax his operations, and I think there was one claim presented there of some \$19,000 or thereabouts. [11]

Mr. Harpole: That is substantially the amount involved in the litigation.

The Referee: Yes. Now, I assume later that you have recorded a lien?

Mr. Harpole: I don't know. That is not a matter—

The Referee: That question does not arise?

Mr. Harpole: No.

The Referee: It is just a question of whether or not this tax should be paid out of the funds which the bank claims as an expense of administration. Is that the point?

Mr. Harpole: Of course, there is always a tax lien involved whether it is an assessed tax or not. We have secured claims here and unsecured creditors, but as I pointed out a minute ago this is an expense of administration.

The Referee: I think I am familiar enough with the facts generally that you may proceed with the proof, Mr. Harpole. If some matter does arise later I will feel at liberty to ask questions.

Mr. Harpole: I offer by reference from the files of this court that agreement that was entered into on January 12, 1937, between the Security-First National Bank of Los Angeles, the F. P. Newport Corporation, Limited, and H. F. Metcalf as Trustee in Bankruptcy of the F. P. Newport Corporation.

Mr. Lynch: May I interrupt you a moment? My under- [12] standing is that agreement which was an exhibit in this case and on file in this court cannot now be located. It apparently is between here and the Circuit Court of Appeals. It has been misplaced, and I wonder under the circumstances if we should not use the transcript of the record in the United States of America versus Metcalf case, and introduce this agreement by reference.

The Referee: Since it was sent to the clerk what happened to it?

Mr. Lynch: They made an effort to find it but could not. However, I have two copies here of the transcript of the record which contain copies of those documents.

Mr. Shelton: Which transcript is that?

Mr. Lynch: United States of America, the tax case.

Mr. Shelton: I see. I am not familiar with that.

Mr. Lynch: I have the Circuit Court of Appeals number. 10130.

Mr. Shelton: Do you have an extra copy of that?

Mr. Lynch: Yes, I think I have another copy at the office besides these two.

Mr. Harpole: Whatever is the most convenient way of getting that in.

Mr. Lynch: We have extra copies here of the agreement if it is necessary to put them in.

The Referee: I will consider the agreement in evidence by reference, if there is no objection, and then we can [13] dispose of the form in which it should be presented to the Court, but I think the way the Court should consider it is in evidence by reference.

Mr. Lynch: Should we introduce this transcript of the record in this one case and then by reference we can refer to it. Then we will know we have got it.

Mr. Shelton: In the case taken up, the Neblett case, the transcript is complete with the contract, modification of the contract and stipulations modifying that.

Mr. Lynch: So is the other one.

Mr. Shelton: If this is complete I will not object to it.

The Referee: I better give that an exhibit number. That will be United States Government Exhibit 1 by reference.

Mr. Shelton: It will be understood in the offer of this document it is done for the purpose of placing in evidence the documentary evidence of the contract and its modifications?

Mr. Lynch: That is right.

Mr. Shelton: Is that satisfactory to you, Mr. Harpole?

Mr. Harpole: I was coming to the modification. I desire to offer the modification of August 31, 1937, between the same parties.

Mr. Lynch: That is a supplement.

Mr. Harpole: The supplemental agreement of August 31, 1937. And I offer the modifying stipulation of October 14, [14] 1937 and the modifying stipulation of October 29, 1937, both relating to the original agreement of January 12, 1937.

The Referee: I think all those may be considered in evidence by reference, if there is no objection.

Mr. Harpole: That is all of the direct evidence, plus the opinion of the Circuit Court of Appeals.

The Referee: Do you want to show you have some taxes due—unless that is conceded.

Mr. Lynch: That is conceded by the answer of the Trustee.

Mr. Harpole: I offer in evidence, in case it is not conceded, the opinion of the Circuit Court of Appeals of the Ninth Circuit, 131 Federal Second, 677, the case of the United States versus F. P. Newport Corporation, Limited, and H. F. Metcalf as Trustee of the estate of F. P. Newport Corporation, Limited, bankrupt.

Mr. Shelton: Now, to that offer in evidence, we have no objection to the introduction of that for the purpose of showing that the Government had a claim against the Trustee but we do object to it as not being binding in any way on the bank, who was not a party to that proceeding.



The Referee: Well, it may be received in evidence as Government's Exhibit 2 by reference for whatever purposes it may serve. It is a little bit difficult for the Court to determine at this time the extent.

Mr. Shelton: With the exception I gave I am perfectly [15] agreeable to have it in. It is not binding on the bank other than to show that the Trustee got,—that the Government got a judgment against the Trustee for income taxes for its operations.

Mr. Harpole: And I will also offer in evidence by reference the order of District Judge Paul J. McCormick, made on the 8th of April, 1943, pursuant to the mandate of the Circuit Court of Appeals of the Ninth Circuit.

Mr. Sheldon: To that offer I make the same objection, namely, that it is not binding on the Security Bank.

The Referee: That may be received by reference as U. S. Government's Exhibit number 3.

Mr. Harpole: That is all.

Mr. Lynch: I might point out to counsel there is no proof whatsoever that the Trustee has the money with which to pay it. Now, he seeks an order here directing the Trustee pay something, a tax, and it is incumbent upon him to show there are some funds available to pay it. I stated the Trustee has conceded all along and the Court has determined it is an expense of administration and that there is a tax liability, but here the United States Government comes along and files a petition and gets out an order to show cause directed to the Trustee why he should not pay it. There must be some showing the Trustee has the ability to pay it.



The Referee: Isn't that true, Mr. Harpole? [16]

Mr. Harpole: That is a matter that seems to me should require no proof. The files in this bankrupt proceeding, or accounts will show the funds on hand.

Mr. Lynch: They do not.

The Referee: It does not show there are funds on hand at the present date. It might show it as of the last report?

Mr. Shelton: That is one reason why I wanted the records and files brought in so all the accounts would be here and if they wanted any particular account they could select them, or if not, you don't have to use them.

Mr. Lynch: There is no account in the files of this court showing funds on hand sufficient to pay this tax liability.

Mr. Harpole: I perhaps will concede there are no funds on hand but the petition prays it also be paid out of the property, if I remember it right. I think it is up to the Trustee to show how far he can go on paying the taxes. We have established the liability and our claim has been allowed.

Mr. Lynch: So have a lot of other claims. The records of this court show there are over \$50,000 of other administration expenses outstanding.

The Referee: I think it is incumbent to show the nature of the fund on hand. It is a simple matter to call the Trustee and show that.

Mr. Harpole: Well, I will call Mr. Metcalf. [17]

H. F. METCALF,

called as a witness in behalf of the United States of America, being first duly sworn, testified as follows:

Direct Examination

By Mr. Harpole:

Q. What is your name?                    A. H. F. Metcalf.

Q. Are you the Trustee in Bankruptcy of the F. P. Newport Corporation, Limited?                    A. Yes, sir.

Q. Do you have any property in that estate?

A. Do I?

Q. Yes, as Trustee?

A. No, sir. Do I have property in the estate?

Q. Yes.                    A. Oh, yes, sir.

Q. What does that property now consist of?

A. I cannot give it all to you, but a general resume' of it consists of nine acres of oil land and harbor frontage on Channel number 3 in Long Beach Harbor;

About twenty acres of property on Hill Street that I think is in process of sale now, I think is probably sold for \$25,000;

150 acres of land in the San Fernando Valley, bounded by Victory. Van Owen, Coldwater Canyon and Fulton Streets; [18]

About fifty or seventy-five unsold lots in Verdugo Woodlands;

The Verdugo Park in Verdugo Woodlands that is under process of sale to the City of Glendale at this time;

About seven or eight hundred—I am not exact as to the acreage, but about seven—no, about four hundred and fifty or five hundred acres of unsubdivided land located on both sides of the Verdugo Woodlands in the Hills.

(Testimony of H. F. Metcalf)

Now, in addition to that there is some property near Tulare Lake, a few lots in Compton and one hundred and some lots up on Honolulu—no—well, it is out in the Sunland Valley.

That is about all.

Q. Do you have any cash in the coffers of the estate?

A. Counting the payment that was made yesterday by the oil company which I think was \$6100, in all accounts I have about between twenty-eight and twenty-nine thousand dollars.

The Referee: Now, you say in all accounts. How many different accounts have you?

A. Three, I think, your Honor.

Q. Will you describe each of those accounts and how much you have in each of them?

A. I am sorry, sir, I cannot do that. I didn't know I would be questioned regarding that.

Q. Aproximately?

A. The approximation would be about \$22,000 in the oil [19] company account. That is the oil account that was, I believe, subordinated to the bank, and then there is twenty-eight hundred or three thousand dollars in another account, and there is a special oil account but I have forgotten how much is in that. I don't watch that very closely.

Q. You say that twenty-eight hundred or three thousand dollars is in your general Trustee account, is it not?

A. No, I think that is the sale of property account, your Honor. That embodies some money deposited for the sale of property. I am not sure of the amount. There was \$22,000 on my last statement from the book-

(Testimony of H. F. Metcalf)

keeper which was during the latter part of last week and since then I have gotten \$6100 so I know the total accounts are a little in excess of \$28,000 and the bulk of that, of course, about \$22,500, is in the oil account which is the large account of them all.

Q. This twenty-eight hundred or three thousand dollar account is where you accumulate some money from the sale of real property?      A. That is right.

Q. What is the other account?

A. There is an oil lease, your Honor, on some small lots. I don't believe those accounts are under the lien of the bank, are they?

Mr. Shelton: We have some that are and some not. Mr. Lynch, I think, can tell you. [20]

Mr. Lynch: Yes. May I interrupt?

The Referee: Yes.

Mr. Lynch: If I can, I think I can straighten it out. Mr. Metcalf is a little confused about the accounts.

A. Yes, I am.

Mr. Lynch: Mr. Metcalf, the oil account, that is the Universal Consolidated Oil Company royalties are deposited in a special account?      A. That is right.

Q. At the Security-First National Bank, head office?

A. Yes.

Q. That is the account to which you refer to as being about \$22,500?

A. That is correct. It was \$16,000 last week and there has since been received and ready to deposit or in the hands of the bookkeeper \$6135, I think, for the past current month oil income.

Q. In addition to that account you have another special account at the Citizens National Trust and Sav-

(Testimony of H. F. Metcalf)

ings Bank in which you have deposited, since the date of the receipt by you of the letter of the Security-First National Bank, all other income that you have received from the properties covered by the bank's contract?

A. Yes, that is correct.

Q. And that includes payments made from community oil and gas leases and some little payments on properties [21] covered by that contract?

A. That is correct.

Q. And in that account there is approximately \$2800?

A. That is correct, I think, yes.

Q. Then you have a general account at the Citizens National Bank in which are deposited revenues from properties other than covered by the contract?

A. Yes.

Q. And in which you have also deposited deposits on account of purchases? A. Yes.

Q. And in that account there is only approximately two or three hundred dollars, and that represents deposits made on account of purchases of property which might have to be refunded?

A. Small amounts, several hundred dollars. I have forgotten exactly.

Mr. Lynch: That is all.

The Referee: How do we get \$28,000 out of that twenty-two thousand and three thousand, that would be twenty-five thousand and then you say in the other account is two or three hundred dollars.

Mr. Lynch: The balance of that other account represents deposits,—your lot deposits amount to \$4025?

A. There was \$2800 and then more money has been deposited since I took cognizance of it. [22]

(Testimony of H. F. Metcalf)

Q. Today those lot deposits are \$4,025, isn't that correct?      A. I assume it is, yes.

Q. And the balance in that general account is the sum of \$156.57?      A. Yes.

Q. Now, in the special rent account instead of \$2800 it is \$1495.02?

The Referee: What account is that?

Mr. Lynch: That is the account at the Citizens National Bank in which there have been deposited since the date of the demand of the bank, I think August 4, 1943, all rentals received.

The Referee: And how much is the amount?

Mr. Lynch: \$1495.02.

A. I opened a new account, your Honor, when the bank filed their action and it got a little confusing having so many accounts at the Security-First National Bank so I opened an account at the Citizens National Bank.

Mr. Shelton: Now, may I ask, because I want this in the record correctly, the amount you spoke of in your special account now at the Citizens National Bank for surface rentals collected by the Trustee subsequent to the notice of the bank.

Mr. Lynch: Subsequent to August 4, 1943?

Mr. Shelton: Yes, and that is for surface rentals from [23] property subject to the lien of the bank.

Mr. Lynch: That is right, and from receipts from the community oil and gas lease royalties.

Mr. Shelton: Received since that date?

Mr. Lynch: That is right.

Mr. Shelton: But on property subject to the lien of the bank.



(Testimony of H. F. Metcalf)

Mr. Lynch: Subject to the contract of the bank. That amounts to \$1495.02.

Mr. Shelton: That memorandum you are reading from was furnished you by whom?

Mr. Lynch: By Mr. Newport, and prepared by Mr. Gribble.

Mr. Shelton: And you are satisfied that is correct, Mr. Lynch?

Mr. Lynch: I am.

The Referee: What is the amount in your oil account?

Mr. Lynch: That is \$22,980.19—just a moment. That may be in error. Yes, \$22,980.19.

The Referee: Then in the sale of property account there is \$4,025?

Mr. Lynch: Yes, that is right; however, that is in the general account. That general account is \$4,181.57. \$4,025, however, of the amount on deposit in that general account represents the deposits made by proposed purchasers of property and unless those sales are confirmed those deposits would be returnable. [24]

A. Well, if those sales are completed there will be—one of the sales is \$4750 and the other \$25,000. There will be nearly \$30,000 in money. Exactly how much is paid preliminarily I cannot tell you at this moment but I think about the amount there. Each one puts up a certain amount of money with their proposals.

The Referee: Were you through with that, Mr. Lynch?

Mr. Lynch: The total of the general account is \$4181.57.

(Testimony of H. F. Metcalf)

Mr. Shelton: I wanted to ask a question or two, your Honor, please.

The Referee: I want to ask him one question:

Q. You have got considerable money here in the oil account and the sales of property account. How long has it been since you have made any disbursements from that fund to the Security Bank?

A. Oh, some couple of months, I guess.

Mr. Lynch: It has actually been longer than that. We have made no disbursements of that fund—

A. Oh, that is since the 4th of August.

Mr. Lynch: Since the demand of the bank?

A. Yes.

The Referee: What I am getting at, up until the time the bank served notice on you they were going to foreclose you have disbursed this money received on property they have had security on to the Security-First National Bank? [25]

A. Mostly, your Honor. Ever since I have been in the picture we have disbursed I think every month regularly as fast as the check came in and your Honor got an order out it was paid promptly. After the order I was instructed to hold the money until further orders.

Q. And that is the reason for the accumulation of this money in the bank account?

A. That is correct. The bank has not asked me for the money. I have discussed it with the bank but no demand has been made.

Q. You don't know the exact total amount you have paid the bank?      A. Since I have been in office?

Q. Yes.      A. About \$800,000.

Q. But you do not know the exact amount?

A. No.

(Testimony of H. F. Metcalf)

The Referee: I think we ought to have Mr. Gribble here with the exact figures.

Mr. Lynch: We have an exhibit we propose to offer during the course of the testimony which will show the amount paid.

The Referee: Very well.

Mr. Harpole: Mr. Metcalf, do you have any opinion as to the value of the unsold real property in this estate?

Mr. Shelton: Just a moment— [26]

A. I certainly have.

Mr. Shelton: Well, you have an opinion.

A. Yes, sir.

Mr. Harpole: Q. Have you been engaged in the real estate business, Mr. Metcalf, at any time?

A. I have been engaged in the real estate business in Los Angeles County for thirty-eight years, your Honor, or Mr. Counsel.

Q. Have you bought and sold real property?

A. Plenty of it.

Q. And real property that compares or is located near to the real property held in this estate?

Mr. Shelton: Mr. Harpole, why cannot we reach that by a statement of this kind or a stipulation of this kind, that there is sufficient money to pay the demand that you have made and for which your petition has been filed, and in value of property if the Government claim is prior to that of the bank. I don't think there is any doubt about that. We do not think it is competent, however.

Mr. Lynch: As a matter of fact, the testimony now discloses that the Trustee does have funds if in fact the Government is entitled to look to those funds, for the payment of its claim. The Trustee has funds on hand.

(Testimony of H. F. Metcalf)

Mr. Harpole: It might be material in case the Court should hold that the bank comes first but that the property has enough value to pay both of us. [27]

Mr. Lynch: That is something else again. Now, the Trustee has not objected to that sort of a stipulation, but if it is the Government's contention they are entitled to direct this Trustee to pay this obligation now because there might be enough in this property at some time to realize enough to pay it, that doesn't make sense. We are not stipulating on what the Trustee might have in his hands at some future time but we are now determining this present petition of the United States Government that this Trustee pay this cash right now. Now, they have got to show an ability to pay the tax or funds out of which it can be paid. Now, it is conceivable, of course, that when and as the bank has been paid off that there will be funds—we don't know that but we certainly have thought so for the last five or six years or we would not be here.

The Referee: I think the Court can take judicial knowledge of the fact there are other administration expenses that have not been paid.

Mr. Lynch: That is correct, and I intend in the course of the testimony to offer proof to that effect.

Mr. Harpole: May I have an answer to my question?

A. What was the question, please?

Mr. Harpole: Will you read the question, Mr. Olson?

Mr. Shelton: May I ask this, to shorten time. The purpose of this question is to qualify him to answer questions as to the value of the property? [28]

Mr. Harpole: That is right.

Mr. Shelton: And to that testimony we object as incompetent, immaterial and irrelevant.

(Testimony of H. F. Metcalfe)

The Referee: Objection overruled. Read the question.

(The reporter read the pending question as follows:

“Q. Have you bought and sold real property? A. Plenty of it. Q. And real property that compares or is located near to the real property held in this estate?”).

A. Yes, sir.

Mr. Harpole: Q. You have testified as an expert witness in many court actions in the Federal and Superior courts in Los Angeles County concerning that?

A. Yes, I have, counsel.

Q. What in your opinion is the present value of the real estate that is in your possession as Trustee in Bankruptcy of the F. P. Newport Corporation, Limited?

Mr. Shelton: To that question we again renew our objection that it is incompetent, immaterial and irrelevant at this time, and add to that the objection that an insufficient foundation has been laid.

The Referee: In what respect has the foundation not been laid?

Mr. Shelton: As to the qualifications of the witness.

The Referee: In what respect?

Mr. Shelton: That there is not a broad enough foundation laid to indicate that he is able to answer the question. [29]

The Referee: Are you familiar with the specific properties in your possession?

A. I am familiar with every property in this estate in my possession except a piece of acreage in or near Tulare Lake. That I never have seen. I have had correspondence about it.

Q. Eliminating that piece, what in your opinion is the reasonable value?

(Testimony of H. F. Metcalf)

Mr. Shelton: May it be deemed as to this line of questions the same objection will run?

The Referee: Very well. Objection overruled. You may answer.

A. I think perhaps it would save time if I gave the value of each piece, wouldn't it, your Honor, or do you want the gross amount?

The Referee: You can give me the gross amount. They may want to cross examine you specifically as to each piece.

A. Just a moment, please. I could have brought up figures on that but I will give them to you in just a moment. Between a million and a million and a quarter dollars. Probably nearer a million.

Mr. Shelton: Now, may it please the Court I move that that answer of the witness be stricken out on the ground that he is testifying as to values of property in a bankrupt estate. Some properties are subject to the liens of the bank and some are not. There is no evidence here that he is [30] an oil expert, that he knows the reserves on the nine-acre piece.

The Referee: That is a matter that can be developed by cross examination, I think. Motion to strike denied.

Mr. Harpole: Q. Now, Mr. Metcalf, do you recall how much has been paid to the Security-First National Bank since the 15th of March, in the year 1938, on its obligation?

Mr. Lynch: May I have that question?

(The reporter read the pending question.)

Mr. Shelton: As to that I object as incompetent, immaterial and irrelevant as to the Government claim. What difference does it make to it whether it has been paid or not.



(Testimony of H. F. Metcalf)

The Referee: It may be material. Objection overruled.

Mr. Shelton: If it were in the other proceeding I think it would be competent evidence.

The Referee: Is that the date your tax claim started?

Mr. Harpole: That is the date the income tax return was due. I don't mind telling you why I think it might be material. Maybe the bank has received money it should not, and the Government should have that fund.

The Referee: Objection overruled.

A. As to that date I cannot, exactly.

The Referee: Mr. Gribble can give that?

A. Mr. Gribble can give figures and dates exactly, your Honor. There has been about \$800,000 paid on [31] principal, all taxes and interest. Now, I think the bank has had to date a million dollars, roughly, but I cannot tell you that exactly. Mr. Gribble can give you that exactly.

Mr. Lynch: The sixth report and account of the Trustee is on file in this court and it does have those figures contained in them.

A. I read them particularly and am familiar with them.

The Referee: What are the figures in that account?

Mr. Lynch: I have my copy here. (Handing to the witness.)

The Referee: Go ahead and state what they are.

A. Disbursements. Payments on property in trust, principal paid in cash \$720,760.76; interest paid \$238,079.03. Taxes and street improvement bonds are not pertinent here, your Honor, are they?

The Referee: Do you wish any further figures, Mr. Harpole?

Mr. Harpole: I believe that will be sufficient.

(Testimony of H. F. Metcalf)

The Referee: Now, those amounts were paid since when?      A. March 25, 1935 to August 31, 1943.

The Referee: The question was, what amount had been paid since March 15, 1938.

Mr. Harpole: Do you have the breakdown?

A. I haven't the breakdown, no sir. Mr. Gribble can give you that though very easily. [32]

Mr. Shelton: The point of your question is how much has been paid since the tax became due?

Mr. Harpole: Yes.

The Referee: I think you better get Mr. Gribble with those figures.

Mr. Lynch: We will have him here this afternoon. March what date?

Mr. Harpole: March 15, 1938—no, March 15, 1939 would be the correct date.

Mr. Lynch: March 15, 1939?

Mr. Harpole: Yes.

The Referee: Any further questions, Mr. Harpole?

Mr. Harpole: No further questions of this witness.

#### Cross-Examination.

By Mr. Lynch:

Q. Mr. Metcalf, you have testified as to what properties were in the estate. Now, the properties that you have mentioned as being still in the estate are all properties which are subject to the contract made with the Security-First National Bank and dated January 12, 1937 which has been introduced by the Government as its Exhibit A, is that correct?

A. You refer now to the value I gave?

(Testimony of H. F. Metcalf)

Mr. Lynch: No, about the properties you have referred to as being properties of this estate still left in the estate? [33]

A. The property outside of the bank's lien in the Newport estate are very small. They are almost negligible, scattered lots here and there worth singly hundreds of dollars, and some scattered lots up in the Sunland district so enmeshed in taxes and street liens they would have very little value. The bulk of the value, I would say ninety-nine per cent of the value of the estate is under the bank's lien.

Q. And the properties specifically referred to in your testimony—

A. They are all under the bank's lien.

Q. As a matter of fact, all of the properties outside of the properties that are covered by the bank's contract are heavily encumbered with taxes, aren't they?

A. I think they are, yes. I know there is one piece in the Verdugo Valley under the first lien to the Bank of America, and it is in arrears heavily and it is in a very unfortunate condition. The estate has not tried to protect that.

Q. And the property in Tulare you referred to a moment ago, that property is on the five-year tax payment at this time?

A. I understand so, yes.

Q. The properties outside of the bank's properties, or outside of the properties that are referred to in the bank's contract of January 12, 1937, are of merely nominal value? [34]

A. Very nominal. Very nominal.

Q. Now, Mr. Metcalf, all of the funds that have been paid to the bank concerning which you have just testified,

(Testimony of H. F. Metcalf)

to-wit, \$720,760.76 paid on principal and \$238,079.03 paid on interest, those funds were paid to the bank pursuant to specific orders of this Court, isn't that true?

A. All of them, yes, sir.

Mr. Lynch: At this time we offer by reference each and all of the orders made by this Court directing the disbursement of funds to the Security-First National Bank together with the petition upon which those orders are based.

The Referee: They may be received by reference as Trustee's Exhibit A in this proceeding.

Mr. Lynch: Now then, we also offer at this time the Trustee's Accounts 1, 2, 3, supplement to number 3, 4, 5 and 6 by reference.

The Referee: They may be received as Trustee's Exhibit B.

Mr. Lynch: Now, Mr. Metcalf, the funds which have been paid to the bank to which you have just testified are funds derived from the Universal Consolidated Oil Company as royalties under its oil and gas lease, and sales of property, title to which stands of record in the name of the—stood of record in the name of Security-First National Bank?

A. That is correct.

Q. As security for its obligation, and are referred to [35] or covered by the contract of January 12, 1937?

A. I think that is correct, yes sir.

Q. So that all of the funds that have been so disbursed to the bank have come from sales of the property covered by its contract or oil and gas revenue from the Universal Consolidated oil and gas lease, including the original payment made by the Universal Consolidated Oil Company as a bonus?

A. That is right.

(Testimony of H. F. Metcalf)

Mr. Lynch: At this time we offer by reference the Universal Consolidated oil and gas lease which is attached to the Trustee's petition for approval of that lease, that is, the petition for authorization and approval on confirmation of oil and gas lease and for order to show cause to execute, the petition being executed by Mr. Metcalf as Trustee and also by the Security-First National Bank and the F. P. Newport Corporation, Limited, bankrupt.

The Referee: The lease may be received as Trustee's Exhibit C by reference.

Mr. Lynch: Mr. Metcalf, the funds to which you have testified that you have on hand have been held by you and no disbursements have been made from them—withdraw that.

Q. The moneys that you have received from the Universal Consolidated oil and gas lease royalties have been held by you in the special account at the Security-First National Bank since August 4 and no disbursements have been made therefrom except a disbursement of ninety some odd dollars [36] to pay for the inspection of the property?

A. Yes, sir. There is an inspection charge of \$90 a month.

Q. You have also opened up an account at the Citizens National Bank, the Citizens National Trust and Savings Bank, head office at Fifth and Spring, in which you deposited other income from the property covered by the agreement of January 12, 1937, since August 4th?

A. That is correct.

Q. And no disbursements have been made from that fund?

A. None at all from that that I know of.

(Testimony of H. F. Metcalf)

Q. And the United States Government and the Security-First National Bank are both making claim to the right to receive payment out of those funds?

A. I have so heard. I have not been served with any notice. I understand it to be true.

Mr. Shelton: Yes, you have been served.

Mr. Lynch: Your counsel has.

Mr. Harpole: The Government demands payment from any and all sources. The tax does not apply to a certain fund. If demand has not been made it may be understood it is made, and Congress has pretty-well settled that.

Mr. Lynch: In addition to that there was a stipulation made at Mr. Harpole's insistence that no disbursements be made from that fund pending the determination of the question.

A. Your Honor could I say something? [37]

Mr. Shelton: Let me get this clear on the record first: It is your position then you are asking not only from income from properties, rents, issues and profits, but you are also demanding as a prior right to pay this Government tax the proceeds from the sale of the real property subject to the lien of the bank?

Mr. Harpole: That is true.

Mr. Shelton: That is what I understood.

A. I was asked a question here, and may I explain?

The Referee: Yes.

A. I think I was asked if the value of the estate would pay the two claims, was I not asked that?

Mr. Lynch: Not that I know of.

A. I meant to say that would be to the extent—the value is there, to pay them, unquestionably.



(Testimony of H. F. Metcalf)

Mr. Shelton: I move that be stricken out as a conclusion of the witness, and a voluntary statement.

The Referee: It is a voluntary statement. It may go out.

A. May I make a further statement?

Mr. Shelton: I would rather have counsel ask the questions so as to give us an opportunity to object, if we so desire.

A. I wanted to clear up a statement I made.

The Referee: You may do that.

A. I was asked something about the value of the estate, [38] and the value of the estate would depend to some extent on what action the Government may take on the sale of further property. They may make claims that may wreck us, and the nature of the claims asserted in some places are pretty serious, and the Federal Government insists on certain claims here and I don't know whether the estate would liquidate those or not. There is abundant value in the estate to pay the Security-First National Bank and the Government if it is liquidated in an orderly way.

Mr. Shelton: I object to that again as a conclusion of the witness, a voluntary statement and self-serving, and ask it be stricken.

The Referee: That part of the statement may be stricken.

Mr. Harpole: I think the statement is proper. I fail to see where it is self-serving.

The Referee: It is more or less voluntary. It may be stricken.

Mr. Harpole: We are only interested in the adjudicated tax claim in this proceeding. I am not trying the

(Testimony of H. F. Metcalf)

case on the theory the Government may have other claims. I don't know whether the Government has or has not.

The Referee: Very well.

Mr. Shelton: But you have a pretty good idea, haven't you?

Mr. Harpole: No, I haven't even a good idea. [39]

Mr. Lynch: Q. Mr. Metcalf, there are unpaid a large amount of expenses of administration?

A. Yes, there are quite a few.

Mr. Lynch: At this time we offer by reference the orders fixing and allowing the fees and other administration expenses and orders directing payment thereof.

Mr. Shelton: What is the purpose of that?

Mr. Lynch: I want to show there is in excess of \$50,000 unpaid expenses of administration, in addition to the Government claim.

Mr. Shelton: I see, for the purpose of throwing light on your claim in the answer that the other expenses of administration are entitled to equal treatment with the Government?

Mr. Lynch: I think that would become a law point, that if the Government is entitled to be paid out of these funds that it has no priority over other expenses of administration.

Mr. Harpole: I am not willing to go along with that idea. The Government's petition did not contemplate it would try the claims of any one else that might consider themselves an expense of administration, and it is possible that the parties to the contract, particularly the Trustee and his attorneys may have waived some rights they otherwise would have had. Certainly, the United States did not do anything of that kind in so far as it came to the [40] knowledge of its counsel. I don't want to be

(Testimony of H. F. Metcalf)

placed in the position of subscribing to any of the contentions that all administration expenses are necessarily on a par in this case.

The Referee: Very well. The orders with reference to the allowance of administration expenses on file in the case may be received as Trustee's Exhibit D by reference.

Mr. Lynch: And also the orders directing payment.

The Referee: Yes.

Mr. Lynch: Now, Mr. Metcalf, no disbursements have been made to administration expenses except on the express order of this Court? A. That is correct.

Mr. Shelton: Well, we are slowly getting the entire record in.

Mr. Lynch: That is what I suggested a while ago we do.

The Referee: Any further questions of this witness?

Mr. Harpole: Q. Mr. Metcalf, do you know whether you paid the 1938-1939 income tax?

A. I don't recall, Mr. Harpole, I ever paid any income tax. I don't think so, no.

Mr. Lynch: We will stipulate there has been no income tax paid.

The Referee: Very well. Any further questions?

Mr. Lynch: I have no further questions.

The Referee: Do you have any further questions, Mr. Shelton? [41]

Mr. Shelton: Not from this witness.

The Referee: You may stand aside.

Mr. Lynch: Pardon me, but I have one more question:

Q. Mr. Metcalf, you have no funds out of which you might pay this claim of the Government other than funds

(Testimony of H. F. Metcalf)

that are derived from oil and gas royalties and the sale of properties that have taken place?

A. And surface rentals.

Q. Titles to which are held by the Security-First National Bank?

A. No, I have no other accounts, no sir.

The Referee: Any further questions?

Mr. Shelton: I think the declaration of trust has been already received in evidence by reference?

The Referee: No, the agreement was.

Mr. Shelton: At this time then we ask the declaration of trust be offered in evidence by reference.

Mr. Casey: It is in the files.

Mr. Shelton: It should be in the files. It is in all the transcripts but I don't know whether it is in the regular files or not.

Mr. Lynch: If you have a copy I think you better introduce it.

Mr. Casey: Wasn't it attached to your claim?

Mr. Shelton: I think so.

The Referee: I think it may be offered by reference [42] I am sure it is in the file. There is no use in encumbering the record.

Mr. Shelton: I think the suggestion made by Mr. Lynch is good, that the transcript of the record which has in order the trust—you have the trust in that, haven't you?

Mr. Lynch: I don't think so.

Mr. Shelton: In the transcript in the Neblett case we have them in order, the original Neblett case.

Mr. Casey: The original Neblett case went up with my case and I don't think it was in that.

(Testimony of H. F. Metcalf)

Mr. Shelton: No, it is the one that went up in an attempt to overrule the order of this Court, entitled the case of F. P. Newport Corporation versus McAdoo, and so forth, number 8703.

The Referee: The declaration of trust may be received in evidence as Bank's Exhibit number 1.

Mr. Shelton: If that is not found to be in the files, what is the situation?

The Referee: If the Court does not find it in the files I will make it known to you gentlemen.

Mr. Lynch: We have a copy here we can leave with the Court.

The Referee: I am certain the Court has it because I have passed on it before.

Mr. Shelton: I know it is in the file and in the transcripts on appeal. [43]

Mr. Lynch: I think I did ask this question but I want to be sure as I think on this particular petition this is a rather crucial question:

Q. Mr. Metcalf, I think you have testified as to what funds you have on hand? A. Yes, sir.

Q. And those are all of the funds you have on hand?

A. Those are all of the funds that I have on hand.

Mr. Lynch: That is all.

The Referee: You may stand aside.

Mr. Lynch: We will have Mr. Gribble here this afternoon on that other matter.

The Referee: Do you have any further questions?

Mr. Shelton: We may want to use him as the basis for putting further testimony in.

The Referee: You do not wish to ask any further questions now?

Mr. Shelton: No, not now.

(Testimony of H. F. Metcalf)

The Referee: Call your next witness, Mr. Harpole.

Mr. Harpole: That is all.

The Referee: You rest your case?

Mr. Harpole: That is right.

The Referee: Does the Trustee have any further evidence?

Mr. Lynch: No.

The Referee: Does the bank have any evidence?

Mr. Shelton: Yes, we have evidence to go in. [44]

The Referee: You may proceed.

Mr. Shelton: We offer in evidence by reference to the files of the bankrupt proceeding the various and sundry deeds which have heretofore been introduced in evidence and are in the files which was given to the bank at the time of the declaration of trust was entered into.

The Referee: They may be received as Bank's Exhibit number 2.

Mr. Lynch: Wait a minute. I didn't quite understand that.

Mr. Shelton: The declaration of trust refers to properties and the descriptions, and I think they were originally introduced in evidence as deeds.

Mr. Lynch: I don't think so.

The Referee: If the Court does not find them he cannot consider them.

Mr. Shelton: I don't think it is necessary to introduce the deeds because a description of the property is set up in the trust, and we will withdraw that.

The Referee: Very well.

Mr. Shelton: I know the notes which created the original indebtedness went in.

The Referee: There is no question about the consideration of the trust.



(Testimony of H. F. Metcalf)

Mr. Shelton: We don't know. Well, of course, that is not on Mr. Harpole's proceeding. Mr. Harpole conceded the [45] indebtedness due to the bank as evidenced by the agreement entered into between the respective parties.

Mr. Harpole: I do not make any contest about the amount of the debt due to the bank. I understand it is about seven hundred thousand dollars.

Mr. Shelton: As evidenced—

Mr. Harpole: By the files.

Mr. Shelton: And the petition.

Mr. Harpole: Yes, the files in this proceeding. I understand the debt is nearer six hundred thousand dollars than seven hundred.

Mr. Shelton: It is stated in the answer.

Mr. Lynch: Can we stipulate it is \$617,278.12 principal?

Mr. Harpole: I will stipulate to that.

Mr. Shelton: Just a minute.

Mr. Lynch: That does not include \$17,897.73 which the bank claims to be a part of its secured indebtedness, that latter amount being disputed by the Trustee. Of course, admittedly as far as the Trustee is concerned this was advanced by the bank but we simply assert it is not a proper item to be included as secured by the trust.

Mr. Shelton: Yes. Those two items constitute our claim, but of course there is delinquent interest.

Mr. Lynch: Yes, I said principal. Interest is unpaid since June 7, 1942, and the interest rate is four per cent per annum, compounded quarterly. [46]

Mr. Shelton: We will so stipulate.

Mr. Harpole: I will accept the stipulation on the Trustee's statement.

(Testimony of H. F. Metcalf)

Mr. Shelton: Now, we would like to introduce at this time the Referee's certificate on the writ of review from the order approving and allowing the contract of January 12, 1937.

Mr. Harpole: That is objected to as immaterial.

The Referee: How would the writ of review be material?

Mr. Shelton: The certificate of the Referee, a certification as to the understanding of the parties at the time that went up and his findings of fact or order that was affirmed.

Mr. Harpole: That is something that was made in the absence of the United States.

The Referee: I don't know how a certificate on review could be evidence. There might be documents attached to the certificate on review but any statement the Referee would make would not be proper evidence, I don't believe.

Mr. Shelton: We are going to get down finally as to what the intention of the parties was with regard to the construction of the contract. We are going to contend, frankly, this whole matter as to what our rights are has been adjudicated.

The Referee: You could not prove what the understanding of the parties was by something I said on a writ of [47] review. Wouldn't that be hearsay?

Mr. Shelton: No, you are the Judge. Your expression on the approval of the contract would be eloquent language when you have been affirmed by two courts. Now, there is a peculiar construction attempted to be placed on this contract and we want the evidence of all parties, including the Trustee's attorneys and the bank's officers and its directors as well as the Referee's at the time this went through.

(Testimony of H. F. Metcalf)

Mr. Lynch: As far as the Trustee is concerned we likewise join in that objection. I don't think the Referee's certificate is a matter of evidence.

The Referee: I cannot see how a Referee's certificate could be evidence. There might be some document attached to it that may be.

Mr. Shelton: Suppose we put it this way. We will withdraw that offer, and offer in evidence at this time the findings and the order of this Referee approving the contract of January 12, 1937 as modified by the supplemental agreement.

Mr. Harpole: That is objected to as immaterial, your Honor. Here is a contract and a supplemental agreement both in evidence in this proceeding, being introduced this morning, and we submit the effect of that is the question now in controversy between the United States and the bank.

Mr. Shelton: The intention of the parties to a contract at the time it was made is always proper evidence if there is a conflict arises over the proper construction of the contract. Now, we are going to have to meet that. As a matter of fact, that is one of the main points in this whole argument, what was intended.

Mr. Harpole: The question before us on this petition, if there is any question of intent, is what was intended to be done with the income taxes, and certainly there has been nothing done about that. If there was any intention expressed it has been probably overruled by the action of the Ninth Circuit Court decision on the Government claim. It was the intention of the Trustee to disallow that claim at one time and he effectuated that by filing an objection and going as far through the courts as he could go.

(Testimony of H. F. Metcalf)

Mr. Shelton: I don't think counsel gets the point that is being made. He very frankly states his position is that this is an expense of administration. In that respect he is joined in by the attorney for the Trustee, and the question arises as to whether expenses of administration, your Honor, can after this contract made by the respective parties, take priority over the lien and security given the bank by contract approved by this Court. Now, if there is a question arises in the mind of this Court as to what the intention of that contract would be, or the modification, what was said and done at the time is of the highest importance. Now, you will notice Mr. Harpole introduced the [49] judgment of the Court. We propose to do that, too, by reference to the decision affirming this Court's finding and order.

The Referee: I will overrule the objection and admit by reference the order and findings in connection with the hearing just mentioned. That was my order on whether or not the bank had a secured claim?

Mr. Shelton: That is right.

Mr. Lynch: It was the finding and order approving the contract.

Mr. Shelton: Yes, and it ruled on it incidentally as to the validity of the bank's security.

The Referee: Very well. That may be received as Bank's Exhibit 2.

Mr. Shelton: Then we offer in evidence at this time the order of Judge McCormick approving the order of the Referee confirming and approving this contract.

The Referee: That may be received as part of Bank's Exhibit 2.

(Testimony of H. F. Metcalf)

Mr. Shelton: Then by further reference we offer into evidence the opinion of the United States Circuit Court of Appeals in Case number 8703 entitled the Matter of F. P. Newport Corporation, Limited, Bankrupt. A co-partnership consisting of William G. McAdoo and William H. Neblett, and William H. Neblett, Appellant, versus F. P. Newport Corporation, Limited, *et al.* That case is now found in [50] 98 Federal Second, 453.

The Referee: It may be received as Bank's Exhibit 3 by reference.

Mr. Shelton: Mr. Lynch, have you the original of the notice directed to H. F. Metcalf calling due the amount of money and giving the sixty-day notice?

Mr. Lynch: I don't believe I have it with me, but I will stipulate—

Mr. Shelton: I have a copy of it here I can introduce.

Mr. Harpole: I have no objection to the copy but the materiality of it is objected to on the proceeding on the tax claim.

Mr. Shelton: We offer this in evidence on the theory, your Honor, that this is a demand for the sequestration of funds belonging to the bank in the hands of the Trustee and initiating the proceedings for foreclosure at the time it was given, dated July 30, 1943.

The Referee: Objection overruled. It may be received as Bank's Exhibit 4. I understand there is no objection to the document because it is a copy?

Mr. Harpole: That is true.

Mr. Lynch: Will you stipulate likewise that was received by the Trustee on August 4th?



Mr. Shelton: On or about August 4th. If you say it was August 4th I will so stipulate.

Mr. Harpole: I will so stipulate. [51]

Mr. Shelton: And do you stipulate on or about the same date you got a copy, Mr. Cahill?

Mr. Cahill: Yes, sir, I will.

Mr. Shelton: Now I am going to call Mr. Adams, please.

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R. T. ADAMS,

called as a witness in behalf of the Security-First National Bank, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Shelton:

Q. Mr. Adams, your attention is directed to that modification of the agreement of January 12, 1937 which has been introduced in evidence and which took place before the Honorable Paul J. McCormick and was approved by him. Do you recall the occasion at the time the Borah Act came up?      A. I do.

Q. Were you present in court at the time of the argument regarding whether or not the stipulation or the contract violated the Borah Act?

A. I was present in court and I recall it.

Q. That was the last stipulation that was made modifying the contract of January 12, 1937 prior to its final approval by Judge McCormick?

A. That is correct, I believe. [52]

Q. You were representing the bank and had been there during all these negotiations?

A. That is correct.



(Testimony of R. T. Adams)

Q. And I am going to ask you if you signed that as assistant secretary of the bank, did you not?

A. I believe so.

Q. And recommended it to Mr. L. W. Craig, the vice-president, to sign it? A. Yes.

Q. And on your recommendation he did sign it?

A. It was signed, yes.

Q. Do you know who drew that modification of the contract?

A. That was drawn in the office of the counsel for the Trustee.

Q. Messrs. Bailie, Turner and Lake?

A. Yes, sir.

Q. And directing your attention to the agreement as the supplemental agreement of August, 1937, part of the contract of January 12, 1937, I direct your attention to a modification or some language left out by Messrs. Bailie, Turner and Lake at that time. The contract before modification read as follows:

“While the said Declaration of Trust No. 7224, and the contract of January 12, 1937, provide expressly that all moneys from sales and leases of property in [53] said trust, shall be paid to and be received by the bank, it is, nevertheless, agreed, pursuant to the order of said bankruptcy court, that such payments shall pass through the hands of the Trustee in Bankruptcy, and be paid to said Trustee in Bankruptcy, and shall be by him forthwith paid over in full to the bank to be distributed in accordance with the terms of the said Trust number D 7224, and the agreement of January 12, 1937, as modified hereby.”

Mr. Harpole: That question is objected to as immaterial on the tax claim.

(Testimony of R. T. Adams)

The Referee: Is your question completed yet?

Mr. Shelton: I am just calling his attention to this claim.

Mr. Lynch: You have not asked any question yet.

Mr. Shelton: No, I have not.

"It is expressly understood and agreed that any such funds so passing through the hands of the Trustee in Bankruptcy, except as hereinafter provided, shall, while in his possession, be impressed by the lien of the Declaration of Trust securing the indebtedness owing to the bank. Such funds shall be deposited by the Trustee in Bankruptcy in a separate fund, and not commingled with any other funds in the bankrupt estate, and shall be deemed earmarked for application on the bank's indebtedness, and, except as in said agreement [54] of January 12, 1937, provided, shall not become any part of the general assets of the bankrupt estate, nor charged with the payment of any of the expenses of administering said bankrupt estate, and nothing herein contained shall prevent the Court from fixing fees on the basis of all money passing through the hands of the Trustee."

Q. Now, when that modification was made, that last clause, "nor charged with the payment of any of the expenses of administering said bankrupt estate, and nothing herein contained shall prevent the Court from fixing fees on the basis of all money passing through the hands of the Trustee," the elimination of that phrase by Bailie, Turner and Lake was to meet what objection?

Mr. Lynch: Just a minute. I object to that on the ground it is highly improper and calls for the conclusion of the witness. The agreement itself is the best evidence of its contents, and there is no occasion for attempting to modify—

(Testimony of R. T. Adams)

Mr. Harpole: And it is immaterial.

Mr. Shelton: I will withdraw that question and I will ask you this question:

Q. By the omission of that phrase in the amendment thereto was there any intention at that time on the part of the bank to subject the property or the income from the property subject to this trust to administration expenses? [55]

Mr. Harpole: That is objected to as immaterial and having no bearing upon the rights or the questions presented by the claim for taxes.

Mr. Lynch: Objected to as immaterial, and on the further ground it calls for the conclusion of the witness, and not the best evidence.

The Referee: Objection sustained.

Mr. Shelton: Just a moment before you rule on that, your Honor please. We have some law on that point. There is a contention made here and it has been made before in a vague sort of way that a certain construction of this contract would indicate that the bank had an intention to subject its security to the payment of expenses in this estate by that modification. That contention is now made by the Government. They put in the contract and they claim that very thing.

Mr. Harpole: Just a minute.

Mr. Shelton: The claim is made by the Government the payment of expenses of administration, to-wit, the payment of income taxes, is ahead of the bank.

Mr. Harpole: We do not make it on the basis of the contract.

Mr. Shelton: We have a right to show that modification that has been laid hold of before was not made by the bank with intention to modify the plain language

(Testimony of R. T. Adams)

subjecting the whole thing to the payment of the bank lien. [56]

As to whether or not we have a right to offer that, the California Supreme Court has ruled that where intention is the gist of the matter set forth in a contract the testimony of the parties to that contract may be elicited and put in evidence. That has apparently been repeatedly determined. The language used is this:

“Testimony to one’s own intention, or other state of mind, has often been attacked on the ground that it is really a disqualification by interest. The argument is that, since a person’s own intention can be shown only through himself, his statement of what it is or was cannot be safeguarded by the possibility of exposing its falsity, through the aid either of conflicting circumstances or of opposing eye-witnesses; and that thus the influence of self interest in falsifying is too dangerous and that such testimony should consequently be forbidden. This argument has been generally repudiated.”

4 Wigmore on Evidence, 185.

“The views of the learned author are the same which have been repeatedly adopted by the courts of this state,” and then follows a long list of authorities.

The Referee: Mr. Shelton, I think at this time we will take the noon recess and we will continue on with this matter at 2:00 o’clock. [57]

Mr. Cahill: Can I make an inquiry at this time? We are waiting on the other matter and may I ask how long you think this will take?

Mr. Shelton: I think we will finish in half an hour on this proceeding.

Mr. Cahill: Very well.

The Referee: 2:00 o’clock, gentlemen.

(Testimony of R. T. Adams)

(Whereupon an adjournment was taken to 2:00 o'clock p. m.) [58]

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2:00 O'Clock, P. M. Session.

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The Referee: You may proceed.

(Whereupon the reporter read the last question as follows: "Q. By the omission of that phrase in the amendment thereto was there any intention at that time on the part of the bank to subject the property or the income from the property subject to this trust to administration expenses?").

Mr. Shelton: Now then, the Court indicated he sustained the objection to that question. The principle of that rule has been well announced in one of the recent decisions, 56 Advance California Appellate at 731 in this language.

The Referee: Let me ask you this: If you had asked Mr. Adams what conversation if any transpired or led up to that amendment I think he could relate that but to ask him what was the intent on the part of the bank, doesn't that call for his conclusion?

Mr. Shelton: That is the one exception to the conclusion rule. You have a right on a contested matter—

The Referee: He was not the only member of the bank that executed this agreement, was he?

Mr. Shelton: No, but he was one of the signing officers and had charge of this thing. He could speak for the bank as to what its intention was because Mr. Adams was the [59] one who had charge of this matter, and he so testified.



(Testimony of R. T. Adams)

Mr. Harpole: If I might interrupt. I do not think we have any quarrel with the California authorities Mr. Shelton cites, but regardless of what this witness may have thought the intent was the courts of the United States have decided this income was subject to tax, and that is final.

Mr. Shelton: Oh no, the United States courts have never decided that this income was subject to the payment of this tax. They have decided I believe finally that certain income of the Trustee that was received by him would subject him to a tax but it has not decided as against the bank it is entitled to take that.

Mr. Lynch: No, but there has been a construction of this provision in the agreement by the Circuit Court of Appeals, as far as that goes.

Mr. Shelton: No, not even there. Whatever has been said in that connection has been *dicta* in that case.

Mr. Lynch: Well, they did construe it, whatever you call it.

Mr. Shelton: I am arguing on the point we have a right, where there is a questioned phrase or phraseology in a contract, and that is the only possible theory on which they could claim that because the contract even without the modifications is as plain as the nose on your face that the funds are sequestered for the secured creditors. The court so decided and it was affirmed. It was a contract of the [60] court through its officers. Now then, through some attempt to construe the modification of that contract it is to be urged and argued this income is subjected to the payment of administration expenses, and we have a right to show when that modification was made the facts and circumstances to enable the Court to construe what happened at that time.



(Testimony of R. T. Adams)

It is our position that the Court, and the record of the Court already put in evidence will show that this contract was approved by Judge McCormick. Then Mr. Neblett raised the Borah Act. There was phraseology in that agreement, put in possibly for the purpose of protecting the Trustee and the others who had an interest in the payment of fees, that, "Nothing herein contained shall prevent the Court from fixing fees on the basis of all money passing through the hands of the Trustee," and Mr. Neblett immediately jumped on that one phrase and said, ahha, that violates the Borah Act and I am the only man in town that has a copy of it. He reopened the matter for further hearing and suggested this be modified and amended. Mr. Bailie's office undertook to wipe out the clause that did that and in doing so added or left out one clause in the contract regarding the payment of fees. My testimony will be offered that I talked to Mr. Bailie at that time and he agreed with me that was only surplusage anyway and there was no intention to change the contract except to avoid the Borah Act. [61]

The Referee: My thought is—I may be wrong—that you could ask Mr. Adams what conversation took place preliminarily to this amendment, let him relate the conversation, but to ask him what the bank had in mind, it seems to me that that is calling for the conclusion of the witness.

Mr. Shelton: We are asking for the intention of the party to the contract that is in question. They claim that is subject to construction, that it is not plain. When we make that modification we are entitled to show the intent.

The Referee: Don't you show that by showing what transpired, and the Court must determine what the intention was.

(Testimony of R. T. Adams)

Mr. Shelton: You can do that. The mere fact he testifies that was his intention never to waive that does not necessarily prove his statement is true. You can test that by establishing certain facts and circumstances. The admissibility of the evidence is what we are now discussing, whether we have the right to ask him what the intent was at that time, and that I submit is decided and has been decided in this State for many years, and since the Federal Courts follow the law of the local jurisdiction I think we are bound by that law.

Mr. Lynch: I now anticipate what Mr. Shelton is attempting to do is to get this Court to put a different construction on that modification than the Circuit Court of Appeals did place on it in another proceeding where the bankrupt [62] was a party. I think under the circumstances that decision is a matter of *res adjudicata*.

Mr. Shelton: That is a matter for argument to the Court.

Mr. Lynch: And I object to it on that ground, in addition to the objections heretofore made.

Mr. Shelton: If the Court would bear with me for a moment I would like to cite further authorities. It is true where there is some ambiguity the facts and circumstances surrounding the making of a contract are always admissible. One rule goes further than that, that where the very question is the intent of the parties, and certainly that is the heart of any contract, to be bound by that you have a right to ask questions on intent. In this recent California case it is stated:

“The general rule is well settled that, under our system, a witness may be examined as to the intent with which he did a certain act, when that intent is a material thing in the action,”

(Testimony of R. T. Adams)

and the intention of the bank at the time it signed that modification to avoid the Borah Act, now attempted to be construed as something else, is the very gist of the matter.

“A jury or trial judge is not bound, of course, to believe the witness when he says he did not have a certain intent, but may find in the circumstances, actions and language an entirely different intent, but [63] the testimony of the witness is competent and relevant and not immaterial. So in this case, as we pointed out, the direct testimony of the defendant as to his belief, motive and intent in making the criminal charge was competent evidence on the question of malice in fact, and pertinent also to his defense of the existence of probable cause for the prosecution.”

The other case I cited this morning, *Howell versus Mays*, 107 Cal. App. at 751 dealt with the intention with which a certain deed was executed. Now, here is a stipulation which is just as valid to us as a deed. What was the intent?

The Referee: If there was a stipulation why wouldn't the stipulation reveal it?

Mr. Shelton: Because, your Honor, it has been distorted in my opinion already once and we have been already notified by Mr. Lynch that it will be again and we want the evidence now in this record if it goes up on appeal, we want a record made that will show the intent of the bank at the time the contract was modified, that there was just one purpose to it and that was to avoid the Borah Act.

Mr. Lynch: I think the agreement is before the Court. It had the approval of the court, was approved by Judge McCormick, and I do not think it is proper at this time

(Testimony of R. T. Adams)

to take testimony on what the intent of the parties was in signing it. [64]

The Referee: You can prove the intent of parties by asking what was in their mind at the time, or can you do it by showing what was said and done?

Mr. Shelton: That is true as well as asking their express intent.

The Referee: It would be a new rule of evidence to me to ask a man what his intent was. I think you can show his intent by showing what he said and did.

Mr. Shelton: Just as this case says, that a jury or trial judge is not bound of course to believe the witness. He can be cross-examined on this and we would invite a wide cross-examination to see whether or not his intention was consistent with what was said and done at the time. We do not think there is any question but what they have the right to do that. Theoretically you might show this man's intent was cooked up since.

The Referee: If that were true you would have witnesses testifying all the time what was in their mind at the time a certain thing was done.

Mr. Shelton: It is only where there is ambiguity or where uncertainty arises.

The Referee: What is uncertain about this?

Mr. Shelton: In this, that another court picked upon the omission of that language, to-wit, the Circuit Court inferring that as to the actions of an attorney hired, a special attorney for the preservation of assets, that the [65] omission of that language showed the intent on the part of every one to subject certain of these assets to the payment of this expense. Now, it does not say so and the contract negated that but the court said otherwise, and Mr. Lynch said he was going to stand on an expression of

(Testimony of R. T. Adams)

opinion by that court. This is the first time we have had an opportunity, when this agreement comes up for express construction, to negative any possible construction of that kind and we have a right we think to introduce evidence to show that.

Mr. Lynch: There has been no proof of any uncertainty or ambiguity in this contract that I know of.

Mr. Shelton: The contract is before the Court.

Mr. Lynch: The Court has not found it to be ambiguous.

Mr. Shelton: The Court has listened to your statement.

Mr. Lynch: That is supported by the decision of the Circuit Court of Appeals.

The Referee: Mr. Lynch, if there was an uncertainty in it are you in agreement with Mr. Shelton or the Court as to how it should be established?

Mr. Lynch: It is my opinion it should be established by what occurred and what was said, and not the party's private opinion.

The Referee: What is your opinion, Mr. Cahill?

Mr. Cahill: I share the same view as Mr. Lynch. I think this is one of the closest cases I have ever seen to [66] attempting by parol evidence to vary the terms of a written instrument. As far as ambiguity in the part sought to be changed, it arose from nothing in the order now made but something that was in the order not approved by the Court.

The Referee: What is your view of it, Mr. Nelson?

Mr. Nelson: I do not agree with Mr. Cahill's view that this language was part of a court order. The court made an order approving the agreement and the parties have reached the agreement with reference to the loans



(Testimony of R. T. Adams)

and security and the court approved it, but I think it speaks for itself.

The Referee: What I mean is, where there was an uncertainty do you believe that should be established by asking a witness what was in his mind at that time, or should it be established by what was said and done?

Mr. Nelson: Normally it would have to be established by what was said and done, of course that would be the general rule. However, when an agreement is ambiguous these cases Mr. Shelton has referred to, the court has found that difference. A party to an ambiguous agreement may testify as to what he thought the agreement meant. What he intended to say in the agreement is self-serving and the Court would have to weigh it in the light of all other facts and circumstances connected with it. Suppose an agreement is drawn by two people and it is drafted and one fellow thinks it means this and the other that and they sign it and there is a mutual misunderstanding as to the intent. [67]

The Referee: But where there was something said and done there, to put it differently.

Mr. Nelson: Then it could be shown by way of impeachment or cross-examination.

Mr. Shelton: Or by affirmative testimony.

Mr. Nelson: That is right. I think the rule is sound, but whether it applies here, I don't know.

Mr. Lynch: There is no showing of any ambiguity.

Mr. Nelson: On that part I think there is something to be said in support of this view. After all, the intent of the agreement is perhaps clear enough on its face for our purposes here.

Mr. Shelton: Well, the position that has been taken by the adverse parties in this matter—of course, I do



(Testimony of R. T. Adams)

not agree with the decision in the Neblett fee case, I do not agree that determines the construction of this contract.

The Referee: I did not in the beginning but I have to now.

Mr. Shelton: That again remains to be seen, so if that idea persists in your mind you yourself have admitted the ambiguity and uncertainty in this contract we are now contending for. Bear in mind, when that court ruled upon this every one thought this agreement was so plain and unambiguous there was no possible misconstruction in it. Now, by that decision coming in even the Court says he is [68] inclined to think, although once he did not think there was some ambiguity, that today there is.

The Referee: Well, I decided the Neblett matter more on another issue, and that was he wrote a letter if he got \$10,000 he would not call on the bank for any other money. That was the principle on which I denied his claim payable. I think had it not been for that letter I would have held that the bank would have had to pay the Neblett claim because he did render service that the bank benefitted from, and in the absence of that letter I would have held that his fee was payable out of the funds that would have otherwise gone to the bank, but he had written a letter, as you recall, saying that if he got \$10,000 at the time he wrote the letter he would not call on the bank for any more money.

Mr. Shelton: That is correct.

The Referee: I decided it on the theory that by signing that letter he had waived his right to pursue the bank for any other money.

Mr. Shelton: Yes, that and I think the other principle was announced in your decision, too, that these funds had

(Testimony of R. T. Adams)

And we have substantially the same thing in the Third Circuit in the case of Miner's Savings Bank of Pittston, Pennsylvania *et al* versus Joyce, 97 Federal Second at 973, which reversed the Pennsylvania District Court. There the Circuit Court said:

"We think the true rule to be that, where a trustee sells a bankrupt's property free of liens, with the consent of the lienholders, the latter are chargeable not only with the actual costs of sale but also with expenses reasonably incurred in the preservation of the property."

They cite the case of Virginia Securities Corporation versus Patrick Orchard, in the Fourth Circuit.

"This of course is not to say that the lienholder should not bear the reasonable expenses of preserving the property, which expenses were clearly for its benefit.

We conclude that the proceeds of the sale of the mortgaged property, as well as the net rents received therefrom after the deduction of expenses applicable [72] thereto, should be devoted to the payment of the costs of sale, the commissions of the trustees and the referee applicable thereto, and the reasonable expenses of preserving the property, and that the balance thereof should be applied to the payment of the liens in the order of their priority, including the lien of the mortgage."

Then we come down to the Virginia Securities Corporation versus Patrick Orchards. That is a Circuit Court of Appeals case for the Fourth Circuit, decided in 1927 and reported in 20 Federal Second at 78, and affirms the District Court for the Western District of Virginia. The Circuit Court said among other things—first I will go back there to say the bankrupt was an orchard company whose assets consisted of six large apple orchards.

(Testimony of R. T. Adams)

It was adjudicated a bankrupt on a voluntary petition in bankruptcy and the trustee sold the bankrupt's property without objection by the lien creditors. The right of the trustee to charge costs and expenses of preserving the property between the date of the bankruptcy and delivery to the purchaser against the purchase price was questioned by the secured creditors, who had in each instance acquiesced in the trustee's incurring the expenses.

This is what the court says:

"Where the expense has been incurred wholly for the benefit and advantage of the mortgaged property, as also [73] is the case here, such expenditure is properly chargeable against it, and particularly is this true where the mortgage or lien creditor voluntarily chooses to avail himself of the administrative functions of the court in bankruptcy to realize on his security.

It was necessary that the property should be sold and pending its sale that it should be preserved. Proper orders looking to the sale of the property had to be drawn and presented, and the property in the meantime had to be maintained in a high state of cultivation, in order to preserve it from serious deterioration and loss. All of these things were for the benefit primarily of the lienholders, who had invoked the aid of the court in the collection of their debts. By coming into bankruptcy, they lost none of their rights; but when a lien creditor avails himself of the instrumentalities of the court in the enforcement of the lien, then the proceeds of the property upon which the lien exists, may be charged with the expenses necessary in the enforcement of the lien as well as in the preservation of the property."

(Testimony of R. T. Adams)

There are other cases cited. Now, that is exactly what has happened here, the lien creditor came into this court and let the Trustee develop an oil well to the great benefit of the mortgage holder and in so doing an expense of some Federal income tax came on. Those arose solely because the [74] Trustee functioned most profitably in his preservation of the property, and clearly the matter of intent would have little place here when it is so well known what has been done, that this creditor, this secured creditor has permitted this property to be administered by the Court. It has been an assistance to the Court and the consequence was that there was an income tax that has arisen.

As I said in the beginning it seems to me that this we are engaged in now is why the Trustee should not pay the income tax, and what may have been put in it or taken out of the agreement by counsel for the Trustee and what the bank thought the purpose in doing that was is just beside the point.

Mr. Shelton: I think it would be enlightening for the Court to know what the answer is to such an argument as that. I won't go into the law although we think it is clearly decided by the Ninth Circuit in a very recent case.

After all, we did not seek the bankruptcy court to administer this property. The bankruptcy court stepped in and prevented the foreclosure of a lien on this property and barred the secured creditor from his right and has continued to bar him from his right of foreclosure for a period of two years. Then in lieu of pressing for that foreclosure to which it had a right, together with all the rents, issues and profits from the property, this Trustee went to the bank and said, On certain considerations if you will [75] forego asking for further foreclosure now,

(Testimony of R. T. Adams)

if you will then accept certain payments over a period of years and give us an opportunity, for the benefit of our general creditors and ourselves to administer this thing we will do two things:

We will undertake to do that, and we will sequester for you as part of your security and payable over to you all of the rents, issues and profits of this property, including that of the oil.

Now, it has been held repeatedly where sequestration has been asked and where it has been accorded that the trustee in bankruptcy at that time becomes not only the agent in a way for the unsecured creditors but the custodian of the rents, issues and profits for the secured creditor, but while in his hands they do not become part of the assets of the bankruptcy court and they are not charged with the expenses of administration. Now, we think when the time comes to put in a brief we can show you the cases to the present day, both Federal and California.

The Referee: Would it make any difference in the admissibility of this testimony as to whether or not the Collector, for the purpose of this proceeding here, as to whether or not the Collector of Internal Revenue was a party to this agreement?

Mr. Shelton: Well, at that time the Collector of Internal Revenue had no claim, he was not even a creditor [76] of this estate. He was not a party to the bankruptcy. When this security was sequestered for the benefit of the bank the Government had no claim. Now, if a claim arises subsequent to that time they cannot reach into the pocket of the bank and take out the moneys theretofore sequestered for the payment of debts, to pay nothing



(Testimony of R. T. Adams)

but a claim of administration. To do so you are taking property without due process and you are violating the terms and conditions of a contract given, and this contract, bear in mind, is a little more sacred than the average contract. It is a contract made with the Court itself, and the language of the Appellate Court cases are to that effect, that a sequestration agreement of this kind is an agreement with the court.

The Referee: In what way is this contract unintelligible?

Mr. Shelton: Uncertain?

The Referee: Yes.

Mr. Shelton: For the simple reason that—well, that will undoubtedly be urged in the briefs, that it means something it does not say. In other words, that by taking out a little phrase in this contract to meet the Borah Act, and this is the phrase that is taken out, and I called the Court's attention to it when I was talking to Mr. Adams this morning and asked the question, this clause was taken out: "nor charged with the payment of any of the expenses of administering said bankrupt estate, and nothing herein [77] contained shall prevent the Court from fixing fees on the basis of all money passing through the hands of the Trustee."

"Nor charged with the payment of any of the expenses of administering said bankrupt estate." That is only a redundant clause, a provision in the clause at best. It only goes one step further and says what the contract says in plain and unambiguous language up to that point.

Now, the contention is by this modification the bank suddenly changed its position it held all the way through



(Testimony of R. T. Adams)

in this case and that for some reason or other we agreed expenses of administration, including the expense the Government now claims, would come out of this fund. Now, it is that situation, that uncertainty which has been already announced by Mr. Lynch himself and referred to by the Court on the bench that we are offering this evidence on to make it absolutely clear that by the elimination of that phrase it was for one purpose only, the elimination of the Borah Act which did not permit agreement for fees. It was no intention whatsoever ever to give up any right we had so consistently claimed and protected up to that point.

The evidence is offered on that point.

Mr. Harpole: Where does the Borah Act infringe on our tax liability?

Mr. Shelton: I don't think the Borah Act does infringe on your tax liability, if you get the point. The Borah Act [78] was a criminal act that had just gone on the statutes.

Mr. Harpole: I think I understand the Borah Act. That prohibits making a contract in advance for attorney fees.

The Referee: It goes further than that. It prohibits any agreement or any attempted agreement between any of the parties in interest for any fees.

Mr. Shelton: Yes, for any fees.

The Referee: The Borah Act does not prevent an agreement for the incurring of expense. Of course, the situation here is this was not such an expense as that. This is an item of expense, if at all, incurred by legislative enactment.

(Testimony of R. T. Adams)

Mr. Nelson: And that is the vital difference between this case and the San Bernardino case. The money he spent was applied to the preservation of the property, and I think there is a great deal of difference between that and administration expenses or tax liabilities derived from the general administration of the estate. In my view, tax claims have about an equal right with other general expenses. I cannot urge here that it is a surcharge against any particular fund.

Mr. Shelton: Now in a way you will find in this proceeding, this one before your Honor now and the subsequent proceeding it will come up in the same way, my good friend Mr. Lynch is seeking to ride in a way on the coat-tails of the Government. [79]

Mr. Lynch: It may be rough riding.

Mr. Shelton: We are all ahead of you. Mr. Lynch has already said the language of a certain case we had before us had something to do with that. Now, that is a different story and the position taken on the question of uncertainty that has arisen, we ask now to eliminate that uncertainty as to whether there was any intention on the part of the bank at the time it was made to subject the assets to the costs of administration.

The Referee: Of course, this Court would not give the bald expression of what the witness might state was in his mind at the time he signed the agreement a great deal of weight unless he fortified it with the circumstances and what was said and done, and the facts surrounding it. The Court would determine the question of intent more from the facts and circumstances surrounding it than he would by the mere expression of the witness as to what he states now was in his mind at that time.

(Testimony of R. T. Adams)

Mr. Shelton: I want that, too, and I think it will bear out what the witness will testify to. We want it and I will call one of the witnesses now in the court room on that point.

The Referee: I will permit the witness to answer the question because I think there is less likelihood of injecting error in the record by permitting him to answer than there would be if I did not. I cannot see any particular [80] harm that could come to the other side by any answer this witness might give.

Mr. Harpole: Whose party is this now? Is this the trial on the tax claim?

The Referee: It is the trial on the tax claim.

Mr. Harpole: Or is it giving Mr. Lynch a free ride on account of his attorney fees?

The Referee: The Court is not considering that angle at all at this time.

Mr. Shelton: Do I gather from the Court's remarks that although he is going to permit the witness to testify it is not going to make any difference with him anyhow?

The Referee: I have indicated the Court would not give very much weight to an opinion of a witness or a statement of the witness as to what was in his mind unless he can back it up by something said or done that in the Court's mind would create such an impression.

Mr. Harpole: Let me further object on the ground there is no foundation laid for the asking of any expression as to the payment of income taxes, there has been nothing to indicate they had any intention about income taxes. It might make a great difference to the Government about who paid the tax.

Mr. Shelton: I am not going to ask him about income taxes, but I will have the question read. I don't think

(Testimony of R. T. Adams)

anybody was worried about income taxes at this time, Mr. Harpole. [81]

Mr. Harpole: Then I think that is the proof that it is immaterial.

Mr. Shelton: No. That has come up since then. Will you read the question, Mr. Olson?

(Whereupon the reporter read the pending question as follows: "Q. By the omission of that phrase in the amendment thereto was there any intention at that time on the part of the bank to subject the property or the income from the property subject to this trust to administration expenses?").

A. No, definitely there was not. That had been the basis all the way through, that we would not enter into this contract unless the cost of administration was behind—

Mr. Harpole: Just a minute. We object to that as not responsive to the question.

The Referee: That is correct. Objection sustained.

Mr. Shelton: Well, your answer to the question is what now? A. No, that we would not.

Q. Now, Mr. Adams, at that time there had been discussions with the other parties to this contract prior to this as to what position the bank would take on the payment of expenses? A. Yes, over a period of months.

Q. Including discussions with the Referee here present?

A. Yes. [82]

Q. And you recall you had conferences with the attorneys for the Trustee? A. Yes.

Q. Messrs. Bailie, Turner and Lake? A. Yes.

Q. And for the Receiver at that time?

A. Yes, sir.

(Testimony of R. T. Adams)

Q. Did you have a conference at that time with Mr. Cahill, for the bankrupt?      A. Yes, sir.

Q. And who were present at most of those conferences for the bank, who took part in those conferences?

A. You, as our legal counsel, and myself.

Q. Was anything said at any of these conferences regarding the question of the payment of administration expenses out of income?

Mr. Harpole: Objected to as immaterial.

Mr. Lynch: Objected to as immaterial and an attempt to vary the terms of a written contract, and that the agreement itself is the best evidence and any conversations or anything preceding that merged in the agreement.

The Referee: Will you read the question?

(The reporter read the pending question.)

Mr. Shelton: The Court suggested that the facts and circumstances that lead up to that would be the most persuasive evidence. [83]

The Referee: Is the question confined as to time?

Mr. Shelton: The time could hardly be isolated other than tying it into the previous conversations.

The Referee: Well, if you will fix the time and place at about the time of this amendment I will permit him to answer.

Mr. Shelton: Q. Well, were you in court at the time the matter was presented to Judge McCormick on the approval of this contract?      A. Yes, sir.

Q. Do you recall the occasion on which—

The Referee: Let him state what happened.

Mr. Shelton: I just wanted to fix the time now.

Q. Do you recall the occasion in the court when this question of the Borah Act came up?      A. I do.

(Testimony of R. T. Adams)

Q. Had the contract theretofore been approved once by Judge McCormick?      A. I believe it had.

Q. And at the time this question of the Borah Act came up for discussion in open court, was it—

A. Yes.

Q. —was it before Judge McCormick?

A. Yes, sir.

Q. And do you recall at that time Mr. Lynch and Bailie, Turner and Lake were present? [84]

A. I do.

Q. And was Mr. Bailie present?

A. I believe Mr. Bailie was present.

Q. And Mr. Cahill?      A. Yes.

Q. And myself?      A. Yes.

Q. Do you remember who was present on behalf of Mr. Neblett's office at that time?

A. Mr. Neblett himself was present.

Q. He was present, was he?

A. I believe he had some one else with him but he also was personally present.

Q. There was another man representing him that day. Do you remember Moseley Jones was there? Do you remember he made the statement, or do you recall?

A. I don't recall.

Mr. Shelton: My recollection is Moseley Jones was present at that time.

The Referee: But you are not testifying. You are trying to. That is why I said to let the witness answer the questions.

Mr. Shelton: You may refresh the memory of your witness, your Honor.

Mr. Cahill: Take him out in the corridor to do that.



(Testimony of R. T. Adams)

Mr. Shelton: I do not practice that way. [85]

Q. Well, what was said on that occasion, if you recall the substance of what was said before Judge McCormick regarding the modification of this contract before approval?

Mr. Harpole: That is objected to as immaterial and not the best evidence.

Mr. Lynch: The Trustee objects on the ground it is immaterial and not the best evidence.

The Referee: Objection sustained; no foundation laid showing it to be the best evidence.

Mr. Shelton: I beg your pardon?

The Referee: There has been no foundation laid to show it to be the best evidence.

Mr. Shelton: Well, the argument took place in court orally, did it not? A. Yes, sir.

Q. In the presence of every one? A. Yes.

Q. And you heard it? A. I did.

Q. Did you hear what was said that day by Judge McCormick and the other attorneys present?

A. I did.

Q. Do you recall at that time what Judge McCormick said?

Mr. Harpole: That is objected to as immaterial and not the best evidence. [86]

Mr. Shelton: Q. (Continuing) Regarding the modification of this contract?

Mr. Harpole: I submit what the court did is the only test.

The Referee: Objection sustained. No foundation is laid.

(Testimony of R. T. Adams)

Mr. Shelton: Q. Now, you personally, before signing this modification you did not have any personal contact with the attorney for the Trustee?

A. No, sir, not in regard to this particular modification.

Q. Not in regard to this particular modification?

A. No.

Q. And that was the last modification before the approval of the contract?

A. I believe that is correct.

Mr. Shelton: I think that is all.

### Cross-Examination

By Mr. Harpole:

Q. In any of your conversations did you say anything about income taxes that might accrue from the operations on the properties of the F. P. Newport estate upon which the bank had a mortgage?

Mr. Lynch: Objected to as immaterial whether he did or did not. [87]

The Referee: Read the question. (The reporter read the pending question.) Objection overruled.

A. I don't recall any, Mr. Harpole.

Mr. Harpole: Q. Do you recall any one representing the Department of Internal Revenue being present at any of those conversations?

A. No, sir.

Mr. Harpole: That is all.

Mr. Shelton: Now I would like to interrogate the witness further about these conversations; it having been opened up by counsel I think I have a right to go into that.

Mr. Harpole: That is only on cross examination.

Mr. Shelton: There has been no testimony about them other than what you brought out.

The Referee: You may inquire.

(Testimony of R. T. Adams)

Redirect Examination

By Mr. Shelton:

Q. These conversations you said where nothing was said about income taxes, was the payment of expenses of administration discussed in those conversations?

A. Yes, it was.

Mr. Harpole: Objected to on the ground it is wholly immaterial.

The Referee: Well, it is leading. Objection sustained.

Mr. Shelton: That is all. [88]

The Referee: Mr. Adams, you said this matter was discussed in the presence of the Referee. When was it discussed in the presence of the Referee?

A. I assumed by that question, was it discussed in open court here in your presence.

Q. Well, it was not, was it? This amendment came up after my certificate on review was filed.

A. It is possible I misunderstood his question. I took his question to mean the whole question of the contract, the costs of administration and so on which was discussed before your Honor.

Q. But this question of this amendment that Mr. Shelton has been talking about and that he has read a time or two took place on the first instance on a review before Judge McCormick, did it not?

A. That is correct, yes, sir.

Mr. Shelton: Your Honor, Mr. Adams did not testify that matter was discussed before you. We were laying then a foundation for conversations we had had theretofore on the contract. I do not want you to get that impression.

(Testimony of R. T. Adams)

The Referee: I did not understand any conversation was called for except in relation to this amendment you have been reading about.

Mr. Shelton: Oh, no.

The Referee: Had I known the testimony was to go into things generally I would have sustained the objection. [89]

Mr. Shelton: Well, you did finally sustain the objection. The question directed to him and when your Honor ruled we could put in his opinion on it but that it would weigh lightly, I thought that gave me the privilege of putting in the circumstances which led up to it.

The Referee: We were talking, as I understood, about the amendment that took place before Judge McCormick.

Mr. Shelton: Yes, but the amendment before Judge McCormick cannot be thoroughly understood without you have the conversations and negotiations of the parties leading up to the contract prior to that, and that is the theory on which they are offered, your Honor.

The Referee: Well, you may proceed, gentlemen.

Mr. Shelton: You have ruled out and sustained objections to that line of testimony.

The Referee: Which line of testimony?

Mr. Shelton: That I cannot ask questions regarding conferences between the respective parties prior to the conference—

The Referee: You do not contend the whole contract is incapable of being understood without explanation?

Mr. Shelton: No, but it all depends on this one change that we are talking about, the whole history—

(Testimony of R. T. Adams)

The Referee: No, I won't go into anything other than the question of the amendment, any conversation with respect to anything else. You might be writing an entire [90] new contract.

Mr. Shelton: Well, that is all, Mr. Adams, at this time. Now, Mr. Harpole has introduced by reference the contract, supplemental contract and modification thereof. I believe. Isn't that correct?

Mr. Harpole: Yes.

Mr. Shelton: Well, we think for the benefit of the complete hearing that any subsequent stipulations which modify that contract and are in the record should also be introduced into evidence and we would like now—there were several other postponements of times of payment and modifications of that contract.

The Referee: Well, I do not recall any others other than those mentioned by Mr. Harpole, but if there are others the Court will consider them.

Mr. Lynch: They are all in the record. One or two of the last ones extending time to pay obligations, make certain payments, are not in the record at all.

Mr. Harpole: Payments to whom?

Mr. Lynch: To the bank.

The Referee: That would not be material on Mr. Harpole's claim anyway.

Mr. Lynch: I do not understand it would be.

Mr. Shelton: I do not think myself those would be very material to the decision on his issue.

Mr. Lynch: I think we can probably all stipulate that [91] under the contract as extended and modified and all those stipulations the full amount of the indebtedness is

now owing—all extensions have expired. There was no extension beyond September 7, 1940.

The Referee: But Mr. Lynch, regardless of any stipulations or extensions and so forth, that would not be material in determining the question involving Mr. Harpole's right to these proceeds.

Mr. Lynch: I see no materiality in it at all.

The Referee: I do not either.

Mr. Shelton: Mr. Burch is uncertain about the stipulation modifying the agreement of January 12 being offered in evidence by Mr. Harpole. May it be deemed all stipulations which modify the contract of January 12 and the supplement thereto may be deemed in evidence?

Mr. Harpole: No, not unless I know what you are referring to.

Mr. Shelton: They are the ones you purportedly put in evidence but Mr. Burch thinks there are some extra ones.

Mr. Lynch: There are some extra ones not in the transcript and therefore not put in by him.

Mr. Shelton: I want to be sure we have those in.

Mr. Harpole: Name them, then.

Mr. Cahill: I am prepared to give the dates if you wish: Modification stipulation dated October 14, 1937; modification stipulation dated October 29, 1937. Those two were [92] placed in evidence.

Mr. Lynch: There are three additional ones, I think.

Mr. Harpole: A supplemental agreement of August 31, 1937.

Mr. Shelton: Yes, that was approved by Judge Utley. You offered that this morning.

Mr. Harpole: Yes, and I will offer it again to make sure.



The Referee: It is in. It is marked your exhibit number two, one of your exhibits marked number two.

Mr. Lynch: In addition to those I think there are three further stipulations entered into between the Trustee and the bank.

Mr. Shelton: All right. Do you have those stipulations?

Mr. Lynch: I do not have them with me.

Mr. Shelton: Well, I have this stipulation on modification of contract of January 12, 1937, dated the 14th of October, 1937. That dealt with the sales of real property, and the stipulation—

Mr. Lynch: You won't have those in the transcript.

Mr. Shelton: Stipulation re modification. I am talking about these main stipulations. Supplemental agreement dated August 31st, which was dated—

The Referee: Will you give me those dates again on those you are now offering? The October 14th stipulation modifying the agreement of 1937 is in already. The one of [93] October 29, 1937, that stipulation is in and the modification of the supplemental agreement of August 31st is in.

Mr. Shelton: Then the one by Judge McCormick, the one that was in front of him. That was dated when?

Mr. Lynch: That does not bear any date but it was October 29th.

Mr. Harpole: The one of October 29, 1937 that I referred to is one that was approved by Judge Paul J. McCormick and provided all moneys must be paid to and disbursed by the Trustee in Bankruptcy in order to comply with the bankruptcy law.

Mr. Lynch: It actually for some reason or other was not dated.

The Referee: You refer now to the order of Judge McCormick approving the stipulation?

Mr. Harpole: I am identifying the stipulation by commenting on the order the Judge made.

Mr. Shelton: Well, I think they are all in, your Honor.

Mr. Lynch: Although I do not see its materiality here, Mr. Shelton, there were three additional stipulations made between the bank and the Trustee.

Mr. Shelton: Oh, yes, you mean subsequent thereto?

Mr. Lynch: Yes.

Mr. Shelton: Oh, yes, that is true.

Mr. Lynch: Just extending time of certain payments.  
[94]

Mr. Shelton: Now, at this time, your Honor, I offer to take the stand and testify myself that at the time this last stipulation modifying the agreement of January 12th to avoid the Borah Act, that I had a conversation with the attorney for the Trustee, Mr. Norman Bailie; that when he prepared that and I found one clause had been left out in order to avoid the Borah Act I asked him whether in his opinion the removal of that clause in any wise subjected the income that had been sequestered for the bank to the payment of administration expenses, and he said no. He agreed with me that the contract was perfectly clear as it was, and on that understanding we signed the stipulation. As I caught the fact he had left it out—why he left it out I did not know, but I called his attention to the fact it was a redundant clause and I did not want to take any more time about it—it had been delayed then too long, and that if he would agree with me he would sign it that I would, and he said he did agree with me.

I can offer that statement as the testimony I would give.

The Referee: Are you asking counsel to stipulate you would so testify?

Mr. Shelton: I would like to get their stipulation, subject to their objection as incompetent, immaterial and irrelevant.

Mr. Harpole: I am unable to stipulate because I don't [95] know anything about it, and I object to it as immaterial to the issue of the tax claim.

The Referee: You may take the stand and testify.

W. C. SHELTON,

called as a witness in behalf of the Security-First National Bank, being first duly sworn, testified as follows:

The Witness: I recall very distinctly the proceedings—

Mr. Harpole: Just a minute. I want to object. You better ask yourself your question.

The Witness: This is subject to being stricken out.

The Referee: State your name?

A. W. C. Shelton.

Q. And your address?

A. 1519 North Kenmore Avenue, Los Angeles.

Mr. Cahill: I believe you are an attorney at law?

A. Yes. attorney at law, licensed to practice before this court.

Mr. Harpole: Do I understand the Court will permit Mr. Shelton to make his statement?

The Referee: He can go ahead and start and if there is any objection you can assert them.

The Witness: I would suggest, your Honor, the proper method would be to move to strike it out if it is not competent. I will hold myself entirely to the conversation regarding the modification— [96]

(Testimony of W. C. Shelton)

The Referee: I think if counsel were asked questions we would get along better.

The Witness: Mr. Burch, will you take over.

Direct Examination

By Mr. Burch:

Q. Mr. Shelton, did you have a conversation or conversations with Mr. Norman Bailie in the Federal court prior to signing the modification agreement?

A. I did.

Q. State who was present?

A. Mr. Bailie and myself.

Q. Please give us the conversation.

Mr. Lynch: Objected to on the ground it is wholly immaterial, incompetent, and obviously offered at this time in an effort to modify the terms of a written agreement, not the best evidence, self-serving.

Mr. Harpole: I object as a self-serving declaration.

Mr. Lynch: And no proper foundation, in that there has been no showing that there is any ambiguity or uncertainty in the agreement itself.

The Referee: Objection sustained.

(The witness leaves the witness stand.)

Mr. Shelton: Then let the record show at this time that the offer is made of testimony to show the statement [97] of counsel for the Trustee made to Mr. W. C. Shelton, attorney for the bank, that the omission of the phrase regarding the payment,

"nor charged with the payment of any of the expenses of administering said bankrupt estate, and nothing herein contained shall prevent the Court from fixing fees on the basis of all money passing through the hands of the Trustee,"

(Testimony of W. C. Shelton)

that it was stated by Mr. Bailie would not in any wise subject the income in the hands of the Trustee to the payment of expenses of administration. I asked him whether it would and I told him I did not want to make an objection to it unless he differed with me and felt it did change it.

Mr. Lynch: We object to the offer on the same grounds as we objected to the question.

The Referee: Objection sustained.

Mr. Shelton: That is all.

The Referee: Any further evidence on the tax item?

Mr. Harpole: Is Mr. Gribble here?

Mr. Lynch: Yes. Come forward. [98]

J. B. GRIBBLE,

called as a witness in behalf of the United States of America, being first duly sworn, testified as follows:

Direct Examination

By Mr. Harpole:

Q. Mr. Gribble, where do you reside?

A. 6149 Glen Alder, Los Angeles.

Q. What is your occupation?

A. Bookkeeper for H. F. Metcalf, Trustee.

Q. How long have you been bookkeeper for H. F. Metcalf, Trustee?

A. Since March, 1935.

Q. Do you have with you a record of the payments made by H. F. Metcalf, as Trustee of the F. P. Newport Corporation, Limited, the bankrupt, to the Security-First National Bank?

A. I merely brought the total that was made between March 15, 1939, to date.

(Testimony of J. B. Gribble)

Q. Will you tell us the total that has been paid between March 15, 1939, to date?

A. On principal payments, \$579,335.76.

Q. And how much on interest?

A. \$153,234.47.

Mr. Harpole: That is all.

The Referee: Are you able to state from what source [99] the principal amount of those funds came, Mr. Gribble?

A. The majority of that payment would come from the oil fund. Some of it occurred from the sales of property which would be authorized by this Court.

Q. And the oil funds you refer to came from this nine acres on the harbor?

A. Yes, sir. I thought of segregating that but I did not have time to do that, your Honor.

Mr. Lynch: You can take the sixth account filed by the Trustee and determine from that account how much has been paid out of the oil revenue, that is, royalties from the Universal Consolidated Oil Company, and how much has been paid out of sales of real property, can you not?

A. I would have to check that to make sure on that. I have it here and I will do that and let you know in a minute or so.

Mr. Shelton: Just a minute, Mr. Gribble. Before you leave the stand I want to ask you, you are also able to testify, are you not, how much of the funds that have been received from oil and how much of the funds that have been received from the sales of property have been paid over to the Trustee with the consent of the bank out of the proceeds received?

A. I could by examining the books, but I do not have that record with me.



(Testimony of J. B. Gribble)

Q. You could get that tomorrow? [100]

A. Yes, sir.

Mr. Lynch: You mean paid out or retained by?

Mr. Shelton: Retained by or paid out to pay certain expenses, with the consent of the bank.

Mr. Lynch: Mr. Gribble, I am not so much interested in that in this particular hearing, but I think it would be advisable if you will, if you will examine the sixth account so you can testify in a few minutes as to the amount that has been paid from the Universal Consolidated Oil Company royalties and the amounts from the sales. Will you do that? A. Yes, sir.

The Referee: Mr. Gribble, what was the total amount of the last monthly check received from the oil company?

A. I received it yesterday and it was in the neighborhood of \$6175. That is just approximately. That is within a few dollars.

Q. And has the monthly check each month always been that large?

A. Many months larger; not always that large.

The Referee: That is all.

Mr. Lynch: That is all I have at this time.

The Referee: Let me ask you this question:

Q. Has there been any recent noticeable reduction in the amount of the monthly checks from the oil receipts?

A. No, they have been averaging in the neighborhood of \$5,500 to \$6,000 for several months past. [101]

Q. There has not been any noticeable decline in the amount received? A. No, sir.

Mr. Shelton: Q. Over what period of time?

A. Several months last past.

Q. Since the wells came in there has been a very substantial decline?

(Testimony of J. B. Gribble)

A. There has been a very substantial decline since they first came in, but since the first of this year, I would say in the neighborhood of fifty-five hundred to six thousand dollars average with possibly one exception when it was around \$5,000, except, your Honor, once in a while the Universal Consolidated makes deductions for taxes which are allocable to the thirty-five per cent royalty and that does not come to us. We get the net check.

The Referee: You mean the Government is getting two cuts out of this?

A. No, that is the State and County tax, the mineral rights taxes.

Mr. Harpole: Why should the Federal Government have the bankruptcy court collect State and County taxes and not Federal income taxes?

The Referee: Any further evidence?

Mr. Lynch: No, subject to having Mr. Gribble's further testimony.

The Referee: On this particular matter is there any [102] further testimony?

Mr. Lynch: I would like to have that testimony go in and I can do it in a very few minutes.

The Referee: Very well.

Mr. Lynch: We might have a short recess at this time, and I may have it ready for your Honor.

The Referee: Very well.

(Recess.)

The Referee: You may proceed.

Mr. Lynch: Q. Mr. Gribble, you now have the approximate amount that was paid to the Security-First National Bank from the royalties received from the Universal Consolidated Oil Company?

A. You asked me just two minutes too soon.

(Testimony of J. B. Gribble)

Q. I will put it the other way around. Do you have the amount paid to the Security-First National Bank out of sales of real property?

A. Out of sales of real property, \$156,877.33.

Mr. Lynch: That is all as far as I am concerned.

The Referee: Q. Have you received any other income than from the sale of real property and oil?

A. Not that has been paid to the bank.

Q. How about rentals?

A. The rentals, your Honor, have been used for office expenses as per the stipulation that \$7,000 a year be allowed, [103] and that was for a couple of years.

Mr. Lynch: That is all.

#### Cross-Examination

By Mr. Shelton:

Q. Now then, since the notice given to Mr. Metcalf on August 3, 1943, revoking any further acquiescence in the use of surface rentals those surface rentals have been paid in to the Trustee and put into a special account?

A. Yes.

Q. And is the statement that that amounts to about fourteen hundred dollars odd correct, or have you that amount there?

A. That is about \$1400.

Mr. Lynch: \$1495.02? A. Yes, sir.

Mr. Shelton: Those are surface rentals?

A. Yes, sir.

Mr. Lynch: Q. Mr. Gribble, I show you a statement purporting to be a statement of the amounts in the various accounts. That was prepared by you? (Handing to the witness.) A. Yes.

Q. And the amount shown on this statement in the general account, \$4,181.57, of which \$156.57 is unallocated? A. Yes, sir. [104]

(Testimony of J. B. Gribble)

Q. And in this special account at the Citizens National Trust and Savings Bank to which Mr. Shelton just inquired, is \$1495.02?      A. Yes, sir.

The Referee: That is for rentals?

A. That is rentals that have accrued since the time of the Security-First National Bank notice, along the first part of August, 1943.

Q. How about the oil account?

A. In the special oil account there is a balance at the present time of \$22,980.19. I expect to have to get a check out of that for real property taxes in the next few days.

Mr. Lynch: Q. In other words, the real property taxes?      A. On the trust property.

Q. On the trust property subject to the lien of the bank, they are unpaid and due by the 5th of December, is that correct?      A. Yes.

Q. And you expect to make some arrangements to get that advanced and paid if everybody is willing?

A. Yes.

Mr. Lynch: Mr. Harpole, I assume as far as the Government is concerned they would have no objection to our paying out of that account the real property tax assessed against this property? [105]

Mr. Harpole: During administration?

Mr. Lynch: Yes.

Mr. Harpole: Yes, surely. We object to anything except on a pro rata basis.

Mr. Lynch: I anticipated that.

Mr. Shelton: I do not see the Government has anything to lose by that. I know the bank wants to save everything they can for everybody here and I am sure there would be a stipulation on our part to do that.

(Testimony of J. B. Gribble)

The Referee: Well, I will settle that question right now, gentlemen. I think the Court will direct the payment of the taxes out of that fund regardless of the objection for the reason I know there are other sales of real property coming on which would increase this fund so as to make it far more than ample to take care of Mr. Harpole's claim, if and when it is allowed.

Mr. Harpole: The claim has already been allowed.

The Referee: I mean allowed to be paid out of this fund. In other words, if I should decide it should be paid out of this fund there will be sufficient to pay it from the sales noticed now.

Mr. Lynch: Yes, there will be enough in the fund next month because there will be another oil royalty check.

The Referee: In other words, you would not be prejudiced by the payment, Mr. Harpole?

Mr. Harpole: There would be no objection if there are [106] sufficient funds to pay both but I am not willing to stipulate that the State be paid and the Federal Government not paid.

Mr. Shelton: But of course the bank in its stipulation the tax be paid out of this fund, that would be subject to the agreement we have had all the time, that it would not be prejudicial in the position we have taken in the way of calling due on the sixty-day notice to foreclose.

Mr. Lynch: That is correct. We would have to pay it some time anyway and it would be better to pay it now and avoid the penalty.

The Referee: Any further questions?

Mr. Shelton: Mr. Gribble did not answer your question as to the amount of oil royalty paid the bank.

(Testimony of J. B. Gribble)

Mr. Lynch: I withdrew it. It is just a matter of computation.

The Referee: Do you have the total amount the oil wells have produced?

A. I have it at the office. I figured that for Mr. Carrey yesterday.

Mr. A. A. Carrey: Yes, I have that with me, the total of all oil wells from the beginning.

Mr. Cahill: I would like to call Mr. Carrey as a witness in the next proceeding.

Mr. Shelton: Q. Will you prepare for me so I can have it the first thing tomorrow morning a schedule showing how much [107] moneys have been released by the Security Bank to the Trustee in Bankruptcy for the payment of general expenses?

The Referee: You mean released from the sale of property and income from property on which the bank has security?

Mr. Shelton: On the secured lien and the oil account.

A. That would be the twenty per cent item and the rentals?

Mr. Shelton: Rentals up to the time we withdrew it, and whatever sum was allowed at the time of the Long Beach Harbor settlement, a very substantial sum of money was allowed then to the Trustee for the purpose of compensating attorneys and others at the time you gave the contract, waiving further payment.

Mr. Lynch: Oh no, no, Mr. Shelton. That has reference to the Bailie, Turner and Lake agreement. That occurred at the time of the condemnation proceedings.

Mr. Shelton: Yes, the condemnation proceedings. Well, I want the amount released, however. There was quite a substantial sum released out of the impounded



(Testimony of J. B. Gribble)

funds subject to the contract with Long Beach that came out of the oil. A. Yes, that is true.

Mr. Lynch: Yes, there was some released.

Mr. Shelton: I don't think it will be difficult to get that, will it, Mr. Gribble?

A. I don't believe so, Mr. Shelton. [108]

Q. And if you will have that for us tomorrow?

A. That is the twenty per cent on real property sales, the rentals, the Long Beach Harbor attorney items, the oil payments and the release on forty acres and the attorney fees?

Mr. Shelton: Yes.

The Referee: Any further questions of this witness? If not, you are excused, and you may call your next witness if you have one.

Mr. Cahill: We have nothing further.

The Referee: Do you have any further evidence, Mr. Harpole?

Mr. Harpole: We rest.

The Referee: Do you rest, Mr. Shelton?

Mr. Shelton: Yes.

The Referee: And you, Mr. Lynch?

Mr. Lynch: Yes.

The Referee: Do you wish to argue this matter now or wait until we have the other matters settled?

Mr. Shelton: We have all pretty well agreed this matter should be argued on briefs.

The Referee: There may be some questions I would like to ask counsel.

Mr. Shelton: In a number of cases I have found that it has been very enlightening to submit the briefs and then call it up for oral argument. [109]

The Referee: That might be a good idea.

Mr. Shelton: I would be glad to do that.

Mr. Lynch: That will be agreeable with us.

Mr. Shelton: Is that satisfactory, Mr. Harpole?

Mr. Harpole: Yes. I am prepared to file a brief now.

The Referee: You may file your opening brief.

Mr. Harpole: Yes.

The Referee: And how much time will you need, Mr. Shelton?

Mr. Shelton: I am going to be tied up in these other matters and then with a trial brief on this question—

The Referee: Why, as far as your brief is concerned, why couldn't your brief cover all matters?

Mr. Shelton: I do not see any reason why it could not.

The Referee: I will give you ten days.

Mr. Shelton: Thanksgiving intervenes and I do not believe that will be quite long enough to prepare this brief for all purposes, I mean on all issues here.

The Referee: How much time would you need?

Mr. Shelton: I would like to have fifteen to twenty days to put that in and I will say this, that I won't take all that time if it is not necessary. I will get it in as quickly as I can.

The Referee: Twenty days. How much time will you need to reply?

Mr. Harpole: I would like to put it off to some time [110] after Christmas. I am pretty well signed up until after that time.

The Referee: As long as the briefs in the matter can come in say by the first of the year.

Mr. Shelton: I would think so.

Mr. Lynch: The Trustee, I assume should have the same time Mr. Shelton has to reply to the Government brief if it is disposed to file any brief on that matter?

The Referee: Very well.

Mr. Shelton: As to the other matter, if we get to it after Mr. Harpole is out of the case I was going to suggest that my theory on that is that the contract itself is an estoppel to these people and casts certainly the burden of proof on them. If they are asking the Court to break it the burden of proof is on them and therefore they probably should open and let me follow. Then I can give a reply brief both to them and Mr. Harpole and in that way segregate the direct response to Mr. Harpole as well as replying to them, because they certainly interlock.

Mr. Harpole: I would like, if convenient, to have the mortgage foreclosure brief and the tax situation brief separate, or if they are in the same document to have them so segregated that I do not have to read too much to find it.

The Referee: I think he can cover your item under one heading or subject matter of his brief and it will be [111] easily found.

Mr. Lynch: If you are going to do that why not file separate briefs? As far as the Trustee is concerned we might prefer to have that done. I don't know whether we will file any brief in the other matter.

Mr. Harpole: I would prefer it that way. The briefs have to be distributed.

Mr. Shelton: Well, it means this, that we have to write two briefs at the same time.

Mr. Lynch: But you have to separate your brief anyway.

Mr. Shelton: Yes, but it is a whole lot easier the other way.

The Referee: If you want to answer Mr. Harpole and you want to adopt that as part of your brief in this matter you may do that.

Mr. Shelton: I may do that. I am sure you will be quite fascinated with the entire brief.

The Referee: Mr. Harpole, I was just wondering on these other questions if you are not an interested party in those, too, since one of the petitions here is Mr. Shelton petitioning the Court to turn this fund over to the bank and the other one is on his right to foreclose. Now, if the Court granted him the right to foreclose the question might enter in on the Government's right not only as to these taxes but other taxes.

Mr. Harpole: The other taxes, if there are other taxes, [112] are still in the offing, as far as I am concerned. The trusteeship is doing so well it would be reasonable to think they have earned more income taxes.

The Referee: I am afraid that will be the case.

Mr. Shelton: It is a fair inference.

The Referee: So I am just wondering if you are not an interested party in these other proceedings. You certainly are on the request to turn the fund over to him.

Mr. Harpole: I think the Trustee probably will protect the Government.

Mr. Lynch: Oh no.

Mr. Shelton: Now he wants to ride on their coat-tail.

Mr. Lynch: The Government will have to fight their own battle.

The Referee: I think on your petition and the one of Mr. Shelton to turn the money over to the bank you are asking it be turned over to you and he is asking that it be turned over to the bank, and I think they kind of interlock.

Mr. Lynch: The Trustee's position is it is up to them to determine it. It is their battle to determine who is going to get it. The Trustee will pay it in accordance with the Court's direction.

The Referee: Let us proceed. If you wish to enter your appearance you may, Mr. Harpole.

Mr. Harpole: I wish to have nothing to do with the fight between the Trustee and the mortgagee. I do not ask [113] for a ride with Mr. Lynch.

The Referee: Are you interested in whether or not the Court grants Mr. Shelton's motion to turn over this fund to the Bank?

Mr. Harpole: I am just interested in an order directing that the payment of administration expenses, particularly that the Federal income tax be paid.

Mr. Lynch: Well now, Mr. Harpole—

Mr. Harpole: And that is not inconsistent, as I see it. Mr. Shelton, as far as I know is entitled to foreclose his mortgage after—

The Referee: But you are overlooking one point. He is asking to foreclose this mortgage but he is asking for more than that. He is asking in a separate petition that the Court turn this money over that we have been talking about here to the bank. Now, you are contending in your petition that the Government should have that money or enough of it to pay your claim.

Mr. Harpole: That is right.

The Referee: If the Court should make an order directing that money be paid to the bank aren't you interested in that matter?

Mr. Harpole: If you make that order I think it would result in the Government wanting to protect itself and it would have to take a review of the order rendered, on its own petition. [114]

The Referee: Well, of course it is up to you as to whether or not you wish to appear in it, but I was just mentioning it so that in the event you did—

Mr. Shelton: It was on that theory I suggested we try them all together.

Mr. Lynch: One thing, as far as the Trustee is concerned we want to be sure of, and that is that the Government petition be determined prior to the time that the bank is allowed to foreclose, if it is allowed to foreclose. In other words, the Trustee does not want to find himself in the position that the Court should make an order granting the bank leave to foreclose without first determining this tax question.

The Referee: I think we will next proceed on Mr. Shelton's or the bank's petition directing or seeking an order of the Court directing the Trustee to pay this money over to the bank.

Mr. Shelton: Is Mr. Harpole going to sit in on this proceeding? If he is not I would like to know it. He has served me now with an opening brief, as of today. I would like to know how much time I will have.

The Referee: Mr. Shelton, I have never had any iron-clad rule about briefs coming in. If attorneys are late I usually call them up and tell them to get them in.

Mr. Shelton: I know Mr. Harpole is very kind about that and so is the Court. If the Court makes the order [115] within twenty days I will try to comply with it.

The Referee: I will make the order of twenty days and I will ask Mr. Harpole to try and reply in the next ten days, and that would apply to the Trustee also.

Mr. Harpole: I think that would be rather conflicting with engagements I have already.

The Referee: If you need additional time let me know and I will probably grant it.



Mr. Cahill: Might I indicate something to your Honor. I am very anxious to place before your Honor this day rather than another day in this week the testimony of certain experts I have here.

The Referee: I think we can get to them. I do not think there is much additional to go in on Mr. Shelton's motion.

Mr. Shelton: I don't think so either.

The Referee: Is it stipulated, gentlemen, that these same facts offered in the proceeding of the United States Government versus the Trustee may be considered in determining whether or not the Court should turn over this fund to the bank or direct the Trustee to turn this fund over to the bank?

Mr. Shelton: I should like that stipulation widened so it goes both as to the order to turn over and the order to foreclose.

Mr. Cahill: Oh, no, I cannot agree to that. [116]

Mr. Shelton: It is the same evidence.

The Referee: Let us take one at a time then.

Mr. Cahill: I have no objection, your Honor please, as to the turnover. As to the foreclosure I must object strenuously. For one thing, I have stood by and not participated in this proceeding at all.

The Referee: I think that is true, Mr. Cahill. Who is interested in the turning of this money over to the bank other than the Trustee? Any persons appearing on that matter?

Mr. Shelton: The Trustee just stated he was not interested in turning over that money we are asking to have turned over at this time.

Mr. Lynch: Certainly we are interested in the determination of who should get it. We have it and we want to know who to pay it to.

The Referee: Are you resisting the motion?

Mr. Lynch: Yes, I am resisting the bank's application on the ground the Government claims it, and I am resisting the bank's application on the ground the bank contends they are entitled to it.

Mr. Shelton: That is the only ground for opposition then?

Mr. Lynch: That is right. I am talking now about the fund that we have presently on hand from this oil.

The Referee: There has been some mention here of paying [117] the Trustee's fees and so forth. Are you resisting the bank's motion on the ground that any other expenses should be paid out of the fund?

Mr. Lynch: Well, yes. They have called attention to the fact I already stated in the answer that the Government is entitled to be paid out of the funds, and also that other administration expenses are entitled to be paid out of the same fund so that the Government would get a proration and not the whole fund as against other administration expenses. I am opposing it, of course, to that effect.

The Referee: Do you stipulate with Mr. Shelton that the evidence heretofore offered in the first proceeding, that is to say, the proceeding of the United States versus the Trustee, be received in evidence on the bank's petition to have the money turned over to the bank?

Mr. Lynch: I do.

Mr. Shelton: Subject to the objections that have been made, and the rulings of the Court.

The Referee: Yes, subject to objections and rulings that have been made.

Mr. Lynch: That is right.

Mr. Shelton: And the Court accepts that stipulation?

The Referee: Yes.

Mr. Shelton: I hold in my hand here for use in this proceeding a partial stipulation of facts worked out by Mr. Burch and Mr. Lynch which stipulates to the substantive facts— [118]

Mr. Cahill: Just a minute. Are we proceeding with the petition to foreclose?

Mr. Shelton: I thought the Court said we would stay with the other until we are through.

The Referee: Yes.

Mr. Cahill: Thank you.

Mr. Shelton: So at this time we offer in evidence this written stipulation of facts signed by attorneys for the bank and the attorneys for the Trustee.

The Referee: It may be received in evidence. I guess this probably should be marked as Bank's Exhibit number 1 in this proceeding, or that might be confusing. The bank has four exhibits in the other matter. I will mark this as Bank's Exhibit number 5 in this proceeding.

Mr. Shelton: Yes, your Honor.

Mr. Lynch: Mr. Harpole, are you going to participate in this proceeding? I have to step out for a moment.

Mr. Harpole: No, I have no desire to participate. I named the bank in the petition I filed. I responded, and I think that is enough to try the issues between the Government and the bank.

The Referee: Very well.

Mr. Harpole: If there is a separate battle between the Trustee and the bank I will keep out of that.

The Referee: Mr. Olson, correct my record. This is a stipulation and not an exhibit. So the stipulation will [119] just be filed and will not be marked as an exhibit at all. Now, do you have any further evidence?

Mr. Shelton: Just a moment, your Honor. We offer in evidence at this time a copy of a letter from Bailie,

Turner and Lake waiving its right to participate in certain fees upon the receipt of certain other fees that have heretofore been paid.

The Referee: This will be marked as Bank's Exhibit number 5.

Mr. Shelton: Mr. Lynch, I think that as to the item of advances made to the Trustee on Trustee's fees and so forth, some \$17,000, that we ought to have a stipulation in this particular proceeding that that matter, or the determination as to the bank's right to recover on that matter under its security should be postponed to at least the foreclosure suit if and when filed.

Mr. Lynch: Yes. I do not see that would be material at all at this time, particularly in this proceeding, because whatever money there is involved in here is not sufficient to pay the admitted liabilities to the bank.

Mr. Shelton: That is right.

Mr. Lynch: So I am perfectly willing to stipulate without prejudice to anybody that that be deferred.

Mr. Shelton: That will be satisfactory here. There is no use to go into those ramifications.

The Referee: Very well. [120]

Mr. Shelton: The testimony that was offered heretofore, the testimony of W. C. Shelton and the testimony that was offered by Mr. Adams and excluded will be also tendered in this proceeding, and the same rulings made?

The Referee: Yes. Counsel, I would like to have in evidence in this proceeding, that you have asked Mr. Gribble to secure for you, the total amount of funds which has come into the general account of the Trustee and been expended for administration expenses generally from funds derived from the sale of oil, rentals and so

forth of property on which the bank has security, I would like for that evidence when accumulated to be presented in this particular proceeding.

Mr. Shelton: Yes, I think that should be before your Honor.

Mr. Lynch: I think so, too, and with the Court's permission may I excuse Mr. Gribble now so he can work on that and we will have it in the morning.

Mr. Shelton: I know as far as I am concerned personally a statement that Mr. Gribble will get up, subject to approval by myself and Mr. Lynch, even after the other evidence is in, will be satisfactory.

The Referee: In other words, after he gets the statement made up you can offer that on stipulation?

Mr. Shelton: Yes.

The Referee: You won't need Mr. Gribble on the [121] foreclosure matter?

Mr. Lynch: Yes, we may later.

The Referee: He will be subject to call then.

Mr. Cahill: We will want him.

Mr. Lynch: Will you want him this afternoon?

Mr. Cahill: No.

The Referee: Now, gentlemen, is there any additional evidence?

Mr. Shelton: I do not believe so at this time on this petition.

The Referee: Very well. Then you rest?

Mr. Shelton: I rest.

The Referee: Do you have any evidence to offer?

Mr. Lynch: No.

The Referee: Anyone else appearing in this matter? Very well, then, that matter will stand submitted. Now, we may proceed with the foreclosure proceedings.



Mr. Lynch: I want to point out at this time although it may be more appropriate in briefs, that regardless of the letter of Bailie, Turner and Lake concerning its right to look to the oil funds for the payment of any of its fees, that no such letter was ever written by the Trustee, and there are in addition to the Trustee's fees additional expenses and we have by reference introduced the orders allowing those various items of expense.

The Referee: Very well. Well, you may proceed on the [122] petition to foreclose. [123]

IN THE DISTRICT COURT OF THE UNITED  
STATES

SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION.

Before Hon. Ernest R. Utley, Referee.

State of California, County of Los Angeles—ss.

I, C. N. Olson, official reporter of the above-entitled court, do hereby certify that the foregoing pages 1 to 123, both inclusive, comprise a full, true and correct transcript of the testimony offered or taken and all rulings, acts and statements of the Court; also all objections or exceptions of counsel, and all matters to which the same relate, made during the progress of said proceedings of November 23, 1943, in re: United States of America versus Trustee.

Dated this 3rd day of December, 1943.

C. N. OLSON,  
*Official Reporter.*

[Endorsed]: Filed Mar. 22, 1945. [124]



In the District Court of the United States  
Southern District of California

Central Division

No. 25308-M

In the Matter of

F. P. NEWPORT CORPORATION, LTD.,

a corporation,

Bankrupt.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER OF THE DISTRICT JUDGE  
UPON REVIEW OF THE REFEREE'S ORDER  
DATED JUNE 6, 1944, DIRECTING PAYMENT  
OF 1938 AND 1939 FEDERAL INCOME TAXES

The above entitled matter came on for hearing before the Court on November 27, 1944, upon the petition of the Security-First National Bank of Los Angeles for review of the Referee's Order of June 6, 1944, which directed the Trustee in Bankruptcy to pay the 1938 and 1939 income taxes due the United States, the Honorable Paul J. McCormick, Judge, presiding. The petitioner, Security-First National Bank of Los Angeles appeared by W. C. Shelton, its attorney; the Trustee in Bankruptcy appeared by Allen T. Lynch, his attorney; the respondent, United States of America, appeared by Charles H. Carr, United States Attorney; E. H. Mitchell and George M. Bryant, Assistant United States attorneys, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, its attorneys. After considering the arguments of counsel and the briefs presented, the Court now makes the following:

## Findings of fact

## I.

That on or about March 1, 1930, F. P. Newport Corporation, Ltd., a corporation, the bankrupt herein, borrowed from Security-First National [229] Bank of Los Angeles the sum of \$760,000.00, which is the same debt as that mentioned in the contract of January 12, 1937, more particularly hereinafter mentioned, including accretions thereto by way of accumulation of interest, additional borrowings, advances for taxes and for trustee's fees and expenses of the said Bank.

## II.

That on or about March 1, 1930, F. P. Newport Corporation, Ltd., a corporation, conveyed to the Security-First National Bank of Los Angeles title to certain real property by four different grant deeds, the same being recorded in Book 9902, page 28, Book 9868, page 150, Book 9850, page 181, and Book 9838, page 216, respectively, of Official Records of Los Angeles County, California. That concurrently with the execution of said grant deeds to said Bank, the said Bank executed and delivered to F. P. Newport Corporation, Ltd. its certain written declaration of trust, under date of March 1, 1930, now known and referred to as Trust D 7224, formerly known and numbered Trust SS 70401, by the terms of which it acknowledged that it had received a conveyance of said property as trustee, with power of sale, as security for the payment of said loan of \$760,000.00 made by said Bank to said F. P. Newport Corporation, Ltd., and as security for all advances, costs, trustee's fees, and expense advanced and incurred under the terms of said declaration of trust.

## III.

That thereafter F. P. Newport Corporation, Ltd. by three different grant deeds, conveyed to said Bank title to certain additional real property, under and pursuant to the terms of said declaration of trust, and as additional security for the payment of said indebtedness, said deeds being recorded in Book 11510, page 239, Book 11493, page 271, and Book 9929, page 62, respectively, of Official Records of Los Angeles County, California.

## IV.

That the properties so transferred to said Bank and record title to which is now held by it pursuant to the terms of said declaration [230] of trust, consist largely of real property, some of which is located in what is known as "Verdugo Woodlands" and some in the San Fernando Valley, and some in the Wilmington Harbor area. That the Verdugo Woodlands property consists partly of subdivided lots and partly of unsubdivided acreage; that the San Fernando Valley property consists of approximately 154 acres; that the Wilmington Harbor property consists of a number of subdivided lots, nine acres of which is on what is known as Channel No. 3 of the Long Beach Harbor, and approximately 20 acres of unsubdivided property in said harbor area.

## V.

That on or about March 1, 1930, F. P. Newport Corporation, Ltd., as further and collateral security for the aforementioned indebtedness, by written assignment, pledged to the Security-First National Bank of Los Angeles the entire beneficial interest in and to said Trust No. #D7224. That on May 16, 1933, the said bankrupt corporation, F. P. Newport Corporation, Ltd., and F. P. Newport and Letitia J. Newport, his wife, granted

to said Security-First National Bank of Los Angeles as trustees all of their right, title and interest in and to the real property situated on Channel No. 3, in the Long Beach Harbor area, containing nine acres more or less, the said grant deed being recorded in Book 1226, page 21 of Official Records of Los Angeles County. That said property so conveyed had previously been conveyed to the said Bank as such trustee on March 20, 1930, and said deed of May 16, 1933, confirmed and ratified said prior conveyance to said Bank. That the legal title to said nine acre parcel of land was then vested in Title Guarantee & Trust Co., as trustees. That subsequently to the said above mentioned conveyance and prior to the execution of the oil lease hereinafter referred to, the said Bank at the request of H. F. Metcalf, Trustee in Bankruptcy, and upon the order of the above entitled Bankruptcy Court, did advance a large sum of money to compromise the claims of various persons in and to said nine acre tract of land. That upon said adverse claims being so satisfied and discharged the legal title to said nine acre tract was conveyed to Security-First National Bank of Los [231] Angeles by said Title Guarantee & Trust Co. to be held by said Bank subject to the terms and conditions of said declaration of trust D 7224, and the contract of January 12, 1937, as supplemented, modified and amended. That under the order of the said Bankruptcy Court, said advance was added to and became a part of the indebtedness owing to said Bank by said Bankrupt.

## VI.

That the said declaration of trust No. D 7224 provides, among other things, as follows:

“Article Sixteenth: All proceeds and avails arising from the rents, issues, leases and sales of the

Trust property, or otherwise, shall be paid to and received by the said Trustee, and said Trustee shall disburse all such proceeds and avails as follows:

\* \* \* \* \*

"III. All proceeds and avails arising from the leases and rentals of said property so received by the said Trustee shall be credited to the General Fund.

\* \* \* \* \*

"VII. Out of the moneys credited to the General Fund the Trustee shall pay.

1st: Its accrued costs, fees and expenses as hereinafter detemined, unless they be sooner paid;

2nd: The taxes, assessments and installments of principal and interest on street bonds assessed or imposed on or against said property then due and unpaid, not payable by the purchaser thereof from the said Trustee.

Should the moneys in the hands of the Trustee available for that purpose be insufficient to pay said taxes and assessments, and installments of the principal and interest on the street bonds when due, then the Beneficiary by its ratification of this Declaration of Trust, covenants and agrees to immediately pay any deficiency in [232] the amount due on said taxes, assessments and bonds to the Trustee;

3rd: Any improvements upon the Trust property, upon the order of the Beneficiary hereunder, or its duly authorized Agent. and/or as contracted by the Trustee as provided for in Article Fourteenth hereof:

4th: Interest, as and when due, on any note secured hereby, if there are not sufficient moneys in the Interest Fund with which to pay the same;



5th: Any liens or incumbrances covering the property sold, nor payable by the purchaser thereof from the said Trustee;

6th: Principal upon any note secured hereby in favor of the Payee after the due date thereof; and

7th: Subject to the foregoing provisions, and provided the Beneficiary is not in default in any manner under the terms of this Declaration of Trust, all of the balance of the moneys received by the said Trustee shall be applied, disbursed and paid in convenient monthly installments to F. P. Newport Corporation, Ltd., a Delaware Corporation, the Beneficiary hereunder, its successors or assigns."

## VII.

That the indebtedness secured by said Declaration of Trust and the collateral pledge of the beneficial interest therein being long past due, the said Security-First National Bank of Los Angeles, as trustee under said declaration of trust, did in accordance with the provisions of said declaration of trust declare the entire unpaid balance of the obligation to be due, and fixed the date for the sale of the real property, standing in the name of said Bank as said trustee, for March 29, 1935.

## VIII.

That on March 19, 1935, an involuntary petition in bankruptcy was filed against the above named bankrupt. Thereafter, and on or about March 25, 1935, H. F. Metcalf was appointed Receiver in Bankruptcy of all the [233] property and assets of the above named Bankrupt Corporation, including the property record title to which was held by the said Security-First National Bank of Los Angeles as such trustee, and the above entitled Court duly restrained said Bank from proceeding with said foreclosure sale.



IX.

That on or about March 25, 1935, said H. F. Metcalf duly qualified as such Receiver and went into possession of the property and assets of said Bankrupt Corporation, including the real property conveyed to said Security-First National Bank of Los Angeles, as trustee, as hereinabove found.

X.

That from time to time thereafter, and prior to the 12th day of January, 1937, said Bank made application to the above entitled court for leave to foreclose and sell that certain real property record title to which was held by it under the said trust No. D 7224. That the Court, over the objection of said Security-First National Bank of Los Angeles, continued said restraining order in full force and effect.

XI.

That subsequent to the 25th day of March, 1935, and prior to the adjudication of said F. P. Newport Corporation, Ltd. as a Bankrupt, extensive negotiations and conferences were had by and between the Security-First National Bank of Los Angeles, the Receiver and their respective counsel, and other interested parties, looking to, and in an effort to devise a method for the liquidation of the properties record title to which was held by said Bank under its trust hereinabove mentioned, and to obviate the necessity of litigation between said Bank and said Bankrupt Estate. That following those conferences and negotiations, an agreement in writing, bearing date of January 12, 1937, was made and executed by and between the Bankrupt Corporation, the said Bank and the said Receiver, which agreement was subsequently supplemented and modified.

## XII.

That the said agreement, together with a supplement thereto and [234] modifications thereof, was duly approved, ratified and confirmed by this Court, and the above entitled Court. That thereafter an appeal from the order so approving and ratifying said agreement, supplement thereto and modifications thereof, was taken to the United States Circuit Court of Appeals (Ninth Circuit) which Court affirmed the said order. That a petition for a writ of certiorari to review the said order was filed with the Supreme Court of the United States and said petition was denied.

## XIII.

That thereafter, on January 12, 1937, said F. P. Newport Corporation, Ltd. was duly adjudicated a bankrupt.

## XIV.

That under date of March 18, 1937, H. F. Metcalf was duly appointed Trustee of said bankrupt estate, duly qualified as such Trustee and ever since said date has been and now is in possession of the property and assets of the Bankrupt Corporation as such Trustee. That said agreement as supplemented and modified was duly signed by said H. F. Metcalf as Trustee in Bankruptcy under the order and direction of this Court.

## XV.

That by the terms of said agreement as so supplemented and modified, it was stipulated, among other things, that the principal Amount of the indebtedness due to said Security-First National Bank of Los Angeles amounted to \$1,304,918.77, and should be payable in installments as therein provided, and that all indebtedness due said Bank should be paid on or before September 7,

1940. That the said agreement, as modified, among other things, provides:

"That while the said Declaration of Trust No. D 7224 and the contract of January 12, 1937, provide expressly that all moneys from sales and Leases of Property in said Trust shall be paid to and be received by the Bank, it is, nevertheless, agreed, in order to comply with the bankruptcy law requiring that all bankruptcy funds be accounted for by the Trustee and be disbursed by him only upon checks or warrants [235] countersigned by the Referee, that all such moneys shall be paid to said Trustee in Bankruptcy, and, until the indebtedness due the Bank has been paid, shall be by him forthwith paid over in full to the Bank, to be distributed in accordance with the terms of said Trust No. D 7224 and the Agreement of January 12, 1937, as modified hereby.

"Recognizing that the Bank has a prior right to the moneys in the preceding paragraph mentioned until the indebtedness due it has been paid, it is therefore expressly understood and agreed that such funds or moneys so paid to and received by the said Trustee in Bankruptcy from Sales or Leases or other disposition of property under said Trust shall, until the indebtedness due the Bank has been paid and except as hereinafter provided, be, while in his possession impressed with the lien of the Declaration of Trust securing the indebtedness owing to the Bank, and such funds or moneys shall be deposited by the Trustee in Bankruptcy in a separate bank account and not commingled with any other funds of the Bankrupt Estate, and shall be deemed earmarked for application on the Bank's indebtedness as provided in said agreement of January 12, 1937, and this sup-

plement thereto, and except as in said agreement and said supplement provided, shall not, until the indebtedness due the Bank has been paid, become any part of the general assets of the Bankrupt Estate. No provision of said agreement of January 12, 1937, or this supplement thereto is made or entered into, directly or indirectly, for the purpose of fixing the amount of the fees or other compensation to be paid to any party in interest or any attorney of any party in interest in this bankruptcy proceeding, for services rendered in connection therewith or otherwise, and the fixing and determination of any fees or compensation to be paid to any one whomsoever from the assets of this Bankrupt Estate, is, in accordance with the Law, left entirely to the determination of the court having [236] jurisdiction of this bankruptcy proceeding, unaffected by any provision, term or condition, express or implied, of said contract of January 12, 1937, or of this supplement thereto."

## XVI.

That thereafter, and with the approval of this Court, said Trustee in Bankruptcy, and Security-First National Bank of Los Angeles as trustee under its said trust, and the Bankrupt, did on or about the 14th day of January, 1938, make and enter into a lease with the Universal Consolidated Oil Company, as Lessee, under and by the terms of which there was let to said Lessee a portion of the real property of said Bankrupt Estate, the title to which stands of record in the name of said Security-First National Bank of Los Angeles as trustee and as security for the obligation owing to said Bank, for the purpose of producing oil and gas from said property. Thereafter the Lessee discovered oil and gas on said property and has produced oil and gas therefrom in commercial paying quantities.

## XVII.

That pursuant to said order of court approving said agreement, supplement and modifications, the oil and gas royalties received by said Trustee in Bankruptcy from Universal Consolidated Oil Company have been deposited in a special account carried in the name of the Trustee in Bankruptcy at the head office of Security-First National Bank of Los Angeles, Sixth and Spring Streets, Los Angeles, California. That oil and gas royalties including bonuses actually paid to the Trustee in Bankruptcy under the terms and provisions of said lease during the years 1938 and 1939 were paid to said Bank, with the consent of said Bank, by the Trustee in Bankruptcy on orders of this Court to cover taxes assessed against the properties record titles to which was held by said Bank as trustee under its said trust, cost of engineering services for checking oil and gas production on the property leased to said Universal Consolidated Oil Company, and to apply on account of interest and principal owing on the secured debt to said Bank. [237.]

## XVIII.

That on July 22, 1940, Nat Rogan, as United States Collector of Internal Revenue for the Sixth Collection District of California, filed a claim in these proceedings on behalf of the United States of America in the amount of \$19,363.65 representing the amount of alleged deficiency in income tax determined by the Commissioner of Internal Revenue as owing by the Trustee in Bankruptcy and the bankrupt estate for the years 1938 and 1939. That objections to said claim were filed by the said Trustee in Bankruptcy and sustained by this Court. That, on appeal, the United States Circuit Court of Appeals for the Ninth Circuit reversed this Court and held that said H. F. Metcalf as such Trustee in Bankruptcy and said



bankrupt estate were indebted to the United States of America for federal income tax as set forth in said claim. That, pursuant to said judgment of said Circuit Court of Appeals, the Honorable Paul J. McCormick as Judge of the above entitled Court made and signed an order in these proceedings on April 8, 1943, allowing said claim in full with interest as provided by law. That said claim has not nor has any part thereof been paid.

## XXIX.

That said Security-First National Bank of Los Angeles received during the years 1938 and 1939 a total of \$451,851.01 from oil and gas royalties paid to it by said Trustee in Bankruptcy of which \$97,665.88 was applied by said Bank on interest owing to it, \$59,010.43 on taxes assessed against the properties record title to which stands in the name of said Bank as trustee under its said trust, \$5,903.23 for expenses of cost of checking production of oil and gas, and the balance of \$289,271.47 on the principal of the secured indebtedness owing to said Bank.

## XX.

That the Commissioner of Internal Revenue determined that the net income on which said tax was assessed was \$87,066.42 for the calendar year 1938 and \$30,288.99 for the calendar year 1939.

## XXI.

That said Trustee in Bankruptcy has not now, nor has he at any [238] time had since the assessment of said tax, any funds with which to pay said tax unless oil and gas royalties paid to him under said lease with Universal Consolidated Oil Company can be used for the payment thereof. That said Security-First National Bank of Los Angeles claims and asserts that the whole of said oil and gas royalties must be paid to it without deduction.



## XXII.

That said agreement of January 12, 1937, provides in part as follows:

"Disbursement of the Special Fund. Out of the Special fund, the Bank shall pay all taxes, assessments, insurance, interest and other charges and expenses of said Trust No. D 7224 not theretofore paid by the Trustee in Bankruptcy. After payment out of said Special Fund of all current interest, taxes, assessments and Trust Expense, and after first setting aside in said Special Fund a reserve sufficient to pay all interest, taxes, assessments and Trust Expenses for one additional year, the remainder of the money in said Special Account shall be paid over to the Trustee in Bankruptcy.

\* \* \* \* \*

"All income from oil, in the nature of bonuses, rentals and royalties from any of the properties held by the Bank in Trust, so paid to the Bank, shall be placed by the Bank in a Special Oil Account.

"The funds in said Account shall be available to the Trustee in Bankruptcy for the purpose of making up any deficiency in the 'Special Fund,' to pay interest, taxes, assessments and expenses, as hereinabove provided, in order to obviate a default; provided, however, that all sums taken from said Oil Account for such purpose shall be repaid to said Oil Account from moneys thereafter coming into Special Fund and not needed to pay other or additional interest, taxes, assessments, or expenses then due. [239]

"Except as herein provided, all amounts in said accounts, shall be applied on September first and March first of each year, or on such other dates as shall be mutually agreed upon by the Trustee in Bank-

ruptcy and the Bank, on the principal of said indebtedness and shall be considered as cash applied on the quotas of principal as hereinbefore set forth."

### XXIII.

That said Trustee in Bankruptcy now has on deposit in said special account carried in his name at said head office of Security-First National Bank of Los Angeles the proceeds of oil and gas royalties received by him from Universal Consolidated Oil Company amounting to approximately \$21,000.

### XXIV.

That said Trustee in Bankruptcy now has on deposit in a special account carried in his name as said Trustee at the head office of Citizens National Trust & Savings Bank of Los Angeles, Fifth and Spring Streets, Los Angeles, funds representing surface rentals of \$1495.02 received from tenants of portions of the properties record title to which it held by Security-First National Bank of Los Angeles as trustee under its trust D 7224.

From the foregoing Findings of Fact, the Court reaches the following:

### Conclusions of Law

#### I.

That the income tax for the calendar years 1938 and 1939 hereinbefore referred to was the result of the production of income the full benefit and enjoyment of which was had by Security-First National Bank of Los Angeles. [240]

#### II.

That the properties record title to which is held by said Bank under its trust D-7224 as security for the obligation owing to said Bank by the Bankrupt have been administered by said Trustee in Bankruptcy by and with the consent and approval of said Bank and for the benefit of said Bank.

III.

That the income taxes for the years 1938 and 1939 are incidental to said administration and a necessary part of the expense of operating, preserving, collecting and liquidating the properties and distributing the proceeds thereof.

IV.

That Security-First National Bank of Los Angeles, having had the full benefit of the income which resulted in the assessment of said taxes, should pay the taxes out of that income for said taxes are a necessary cost of producing said income.

V.

That by the provisions of said agreement of January 12, 1937, as supplemented and modified, the oil and gas royalties received from Universal Consolidated Oil Company can be used for the purposes of paying taxes including income taxes assessed against the Trustee in Bankruptcy and the bankrupt estate herein.

VI.

That said claim of United States of America and the Collector of Internal Revenue for said income taxes should be paid by the Trustee in Bankruptcy herein out of the special accounts of said Trustee in Bankruptcy with said Security-First National Bank of Los Angeles and with said Citizens National Trust & Savings Bank of Los Angeles, and if said funds now on deposit in said special accounts are insufficient to pay said taxes in full and interest thereon, such deficiency should be paid by the Trustee in Bankruptcy out of oil and gas royalties when and as received by him from Universal Consolidated Oil Company [241]

VII.

That since the funds now on deposit in said special accounts of said Trustee in Bankruptcy appear to be in-

sufficient to pay said income taxes in full and interest, it is not necessary for this Court at this time to determine whether oil and gas royalties paid to the Trustee in Bankruptcy herein under said oil and gas lease with Universal Consolidated Oil Company or surface rentals received by the Trustee in Bankruptcy from tenants of the property record title to which is held by said Bank as trustee under its said trust D-7224 may be used to pay expenses of administration other than said income taxes.

## VIII.

That the Referee in Bankruptcy did not err in his Order of June 6, 1944.

Now. Therefore, It Is Hereby Ordered, Adjudged and Decreed that the Order of the Referee in Bankruptcy, dated June 6, 1944, directing payment of the 1938 and 1939 income taxes due the United States be, and the same is hereby confirmed.

Dated, Feb. 6th. 1945.

PAUL J. McCORMICK  
District Judge

Approved as to Form:

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Attorneys for Security-First National Bank.

Judgment entered Feb. 6, 1945. Docketed Feb. 6, 1945. Book 30, page 632. Edmund L. Smith, Clerk; By B. B. Hansen, Deputy.

Notation made in Bankruptcy Docket on Feb. 6th, 1945, pursuant to Rule 79(a), Civil Rules of Procedure. Edmund L. Smith, Clerk U. S. District Court, Southern District of California; by B. B. Hansen, Deputy.

[Endorsed]: Filed Feb. 6, 1945. [242]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT COURT  
OF APPEALS FOR THE NINTH CIRCUIT.

Notice is hereby given, that the Security-First National Bank of Los Angeles, a national banking association, a secured creditor of the Bankrupt, and a claimant in the above bankruptcy proceedings, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the Order of the United States District Court for the Southern District of California, Central Division, entered February 6, 1945, in C O Book 30, page 632, confirming and approving the Order of Ernest R. Utley, Referee in Bankruptcy, of June 6, 1944, directing payment of 1938 and 1939 Federal Income Taxes out of rents, issues and profits hypothecated to said Security First National Bank of Los Angeles, as security for the payment of the indebtedness due it from said F. P. Newport Corporation, Ltd., a corporation, Bankrupt.

Dated: February 26th, 1945.

W. C. SHELTON &  
GEORGE W. BURCH, JR.

By W. C. SHELTON

Attorneys for Security-First National Bank of Los Angeles, 923 Subway Terminal Building, 417 S. Hill Street, Los Angeles 13, California.

3-2-45 Mailed copy to Chas. H. Carr, U. S. Atty., and Bailey, Turner & Lake, Attys. for Trustee.

[Endorsed]: Filed Mar. 2, 1945. [248]

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF POINTS TO BE  
URGED UPON APPEAL.

1. That the District Court and the Referee in Bankruptcy erred in ordering H. F. Metcalf, Trustee in Bankruptcy for the above named Bankrupt, to pay to the Collector of Internal Revenue of the United States the Federal Income Tax assessed for the calendar years 1938 and 1939, and interest thereon, out of oil and gas royalties and surface rentals received or to be received by the said Trustee in Bankruptcy from properties, the record title to which stands in the name of the Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, for the reason that under and by virtue of that certain contract of January 12, 1937, as supplemented and modified, between the Security-First National Bank of Los Angeles, F. P. Newport Corporation, Ltd., a Bankrupt, and H. F. Metcalf, as Trustee in Bankruptcy of F. P. Newport Corporation, Ltd., a Bankrupt, the said oil and gas royalties and surface rentals received or to be received by the said Trustee in Bankruptcy were sequestered for the payment of the indebtedness of said Bankrupt corporation to the Security-First National Bank of Los Angeles, said debt being in excess of \$600,000.00 as of the date of said Referee's order; that [252] said sequestered funds were to be free of any recourse thereto by the Trustee in Bankruptcy for the payment of any costs and expenses incurred by him as such Trustee, and free and clear of any claims thereto by any creditor of said Trustee in Bankruptcy, including the Collector of Internal Revenue and the United States Government for income taxes, and free of any general creditor's claims in the Bankruptcy proceedings.



2. That the District Court and the Referee in Bankruptcy erred in ordering H. F. Metcalf, Trustee in Bankruptcy of the above named bankrupt, for the purpose of making said payment of income taxes for the calendar years 1938 and 1939, and interest thereon, to use any funds on deposit in the special accounts carried in his name as said Trustee in Bankruptcy at the Head office of the Security-First National Bank of Los Angeles, Sixth and Spring Streets, Los Angeles, California, and Citizens National Trust and Savings Bank, 5th and Spring Streets, Los Angeles, California, for the reason that under and by virtue of that certain contract of January 12, 1937, as supplemented and modified, said special accounts comprised and consisted only of the rents, issues and profits received or to be received by said Trustee in Bankruptcy from properties, the record title to which stood in the name of Security-First National Bank of Los Angeles as Trustee under its Trust D 7224, and which amounts were sequestered for the payment of the indebtedness due from F. P. Newport Corporation, Ltd. a Bankrupt, to the Security-First National Bank of Los Angeles.

3. That the District Court and the Referee in Bankruptcy erred in denying the Petition and Prayer of Security-First National Bank of Los Angeles that said Trustee in Bankruptcy be required to pay over to the said Bank the oil and gas royalties and surface rentals received, or to be received, by the said Trustee in Bankruptcy from the properties the record title to which stands in the name of said Bank as Trustee under its Trust D 7224, for the reason that under and by virtue of said contract of January 12, 1937, as [253] supplemented and modified, the said oil and gas royalties and surface rentals received or to be received by said Trustee in Bankruptcy

from said properties were sequestered for the payment of the indebtedness due from said Bankrupt to the Security-First National Bank of Los Angeles.

4. That the Referee in Bankruptcy erred in holding that as to the Security-First National Bank of Los Angeles, the said Trustee in Bankruptcy was, during the calendar years of 1938 and 1939, operating property of said Bankrupt, the record title to which is held by the Security-First National Bank of Los Angeles, within the meaning of Section 52 (a) of the Revenue Code, and Section 19.52-2 of Treasury Regulations 103, since the said Trustee in Bankruptcy's operation thereof was for liquidation purposes and as limited by said contract of January 12, 1937, as supplemented and modified.

5. That the District Court and the Referee in Bankruptcy erred in holding that the net income received by said Trustee in Bankruptcy during the calendar years 1938 and 1939, respectively, from properties, the record title to which is held by Security-First National Bank of Los Angeles under its Trust D 7224, under and by virtue of said contract of January 12, 1937, as supplemented and modified, was subject to Federal Income tax within the meaning of Section 52 (a) of the Revenue Act of 1938, and of the Internal Revenue Code, for the reason that under the provisions of said contract, as supplemented and modified, the said net income was sequestered for the payment of indebtedness owed by the Bankrupt corporation to the Security-First National Bank of Los Angeles.

6. That the District Court and the Referee in Bankruptcy erred in holding that the properties, the record title to which is held by the Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, and as security for the obligation owed by the Bankrupt cor-

poration to said Bank, have been administered by said Trustee in Bankruptcy by and with the consent and approval of said Bank, and for the benefit of said bank, for the reason that said [254] Trustee in Bankruptcy's possession of said properties are for liquidation purposes only, as provided by the said contract of January 12, 1937, as supplemented and modified.

7. That the District Court and the Referee in Bankruptcy erred in holding that the income tax for the calendar years 1938 and 1939 was the result of the production of income, the full benefit and enjoyment of which was held by the Security-First National Bank of Los Angeles, for the reason that the income tax was levied against the said Trustee in Bankruptcy and not against the said Security-First National Bank of Los Angeles, and for the further reason that said income tax, by virtue of said contract of January 12, 1937, as supplemented and modified, cannot be charged against oil and gas royalties and surface rentals received or to be received from properties, the record title to which is held by the said Bank.

8. That the District Court and the Referee in Bankruptcy erred in holding that the properties the record title to which is held by said Bank under its Trust D-7224, as security for the obligation owing to said Bank by the Bankrupt have been administered by said Trustee in Bankruptcy by and with the consent and approval of said Bank and for the benefit of said Bank.

9. That the District Court and the Referee in Bankruptcy erred in holding that the income taxes for the years 1938 and 1939 are incidental to said Bankruptcy administration, and a necessary part of the expense of operating, pursuing, collecting and liquidating the prop-

erties and distributing the proceeds thereof, in so far as said Security-First National Bank of Los Angeles is concerned, for the reason that under the provisions of said contract of January 12, 1937, as supplemented and modified, all of the oil and gas royalties and surface rentals received and to be received by said Trustee in Bankruptcy, which includes all sums in the special bank accounts standing in the name of the Trustee in Bankruptcy, from properties the record title to which is held by the Security-First National Bank of Los Angeles, were sequestered for the payment of the indebtedness owed by said Bankrupt to said Bank. [255]

10. That the District Court and the Referee in Bankruptcy erred in holding that Security-First National Bank of Los Angeles, having the full benefit of the income which resulted in the assessment of said taxes, should pay the taxes out of that income, for the reason that the tax assessed for the years 1938 and 1939 were assessed against the said Trustee in Bankruptcy and for his operations and not against said Security-First National Bank of Los Angeles.

11. That the District Court and the Referee in Bankruptcy erred in holding that by the provisions of said agreement of January 12, 1937, as supplemented and modified, the oil and gas royalties received from Universal Consolidated Oil Company, lessee of property, the title to which stands in the name of Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, can be used for the payment of income taxes assessed against the Trustee in Bankruptcy and the Bankrupt Estate, for the reason that said contract, as supplemented and modified, provides that such income is sequestered for the benefit of the Security-First National Bank of Los

Angeles, to be applied by said Bank on the indebtedness due it from said Bankrupt Corporation.

12. That the District Court and the Referee in Bankruptcy erred in holding that if the funds on deposit in said special bank accounts, which comprises the income collected from properties the record title to which stands in the name of the Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, are insufficient to pay said claim of the United States of America and the Collector of Internal Revenue for income taxes for the calendar years 1938 and 1939, plus interest thereon, such deficiency should be paid by the Trustee in Bankruptcy out of oil and gas royalties when and as received by him from Universal Consolidated Oil Company, for the reason that such rents, issues and profits, by virtue of the provisions of said contract of January 12, 1937, as supplemented and modified, were sequestered for the payment of the indebtedness due said Bank by said Bankrupt corporation.

Dated: March 9, 1945.

W. C. SHELTON &  
GEORGE W. BURCH, JR.

By W. C. SHELTON

Attorneys for Appellant [256]

Received copy of the within Appellant's Statement of Points to be Urged on Appeal this 9th day of March, 1945.

BAILIE, TURNER & LAKE

By F. C. GRANT

Attorneys for Trustee in Bankruptcy

EUGENE HARPOLE

By BEATRICE HOBAN

Attorney for Collector of Internal Revenue

[Endorsed]: Filed Mar. 9, 1945. [257]



[Title of District Court and Cause.]

NOTICE OF MOTION.

To the United States of America, and its attorneys, Charles H. Carr, United States Attorney; E. H. Mitchell, and George M. Bryant, Assistant United States Attorneys, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, its attorneys, and H. F. Metcalf, Trustee in Bankruptcy, and Allen T. Lynch, his attorney:

You and each of you will please take notice, that the Security-First National Bank of Los Angeles, a secured creditor of the above named bankrupt, will, on the 26th day of February, 1945, at the hour of two o'clock P. M., or as soon thereafter as counsel can be heard, in the Court Room of Honorable Paul J. McCormick, make a motion to have the Court fix the supersedeas bond on appeal of the Security-First National Bank of Los Angeles to the Circuit Court of Appeals for the Ninth Circuit from the Order of the United States District Court for the Southern District of California, Central Division, entered February 6, 1945, in C O Book 30, page 632, confirming and approving the Order of Ernest R. Utley, Referee in Bankruptcy, of June 6, 1944, directing payment of 1938 and 1939 Federal Income Taxes out of rents, issues and profits hypothecated [243] to Security-First National Bank of Los Angeles as Security for the payment of the indebtedness due it from said F. P. Newport Corporation, Ltd.

In connection with said Motion, you and each of you will be advised that said Bank will move said court for



an Order directing the Trustee in Bankruptcy to hold the amount of money required to pay the Federal Income Taxes for the calendar years of 1938 and 1939 plus interest and costs, in a special account, separate from other funds of said Trustee, pending the determination of the appeal and the fixing of the supersedeas bond in a nominal amount.

Said Motion will be based on this Notice of Motion, and the records and files of the above Bankruptcy.

Dated: February 16, 1945.

W. C. SHELTON &  
GEORGE W. BURCH, JR.

By W. C. SHELTON

Attorneys for Security-First National Bank of Los  
Angeles [244]

Received copy of within Notice of Motion and copy of  
Points and Authorities this 16th day of February, 1945.

CHARLES H. CARR E.H.

United States Attorney

E. H. MITCHELL and E.H.

GEORGE M. BRYANT E.H.

EUGENE HARPOLE

Special Attorney, Bureau of Internal Revenue

ALLEN T. LYNCH

Attorney for H. F. Metcalf Trustee

[Endorsed]: Filed Feb. 16, 1945. [245]

[Title of District Court and Cause.]

ORDER FIXING SUPERSEDEAS BOND ON  
APPEAL

The motion of the Security-First National Bank of Los Angeles to fix the supersedeas bond on appeal of the Security-First National Bank of Los Angeles to the Circuit Court of Appeals for the Ninth Circuit *Court of Appeals* from the Order of the District Court of the United States, for the Southern District of California, Central Division, confirming and approving the Order of Ernest R. Utley, Referee in Bankruptcy, of June 6, 1944, duly came on for hearing on February 26, 1945, at 2:00 P. M. in Court Room No. 8 of the above entitled court, before Honorable Paul J. McCormick, Judge presiding; the Security-First National Bank of Los Angeles being represented by attorneys W. C. Shelton and George W. Burch, Jr., the United States of America being represented by attorney Eugene Harpole, and H. F. Metcalf, Trustee in Bankruptcy, being represented by his attorney, Allen T. Lynch.

Good Cause having been shown in the premises, and it appearing to the Court that Security-First National Bank of Los Angeles, a national banking association, is appealing to the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing [246] to the Court that appellant is entitled to such a stay,

It Is Ordered, that H. F. Metcalf, as Trustee in Bankruptcy, is instructed to hold \$25,000.00 in his special oil

account pending the further order of the court, and that execution of any proceeding to enforce the Order entered herein on the 6th day of February, 1945, confirming the Order of Referee on Review, be stayed pending the determination of the appeal of the Security-First National Bank of Los Angeles from such Order, upon the filing by said Security-First National Bank of Los Angeles, and approval by this Court, of a bond in the sum of \$1,750.00.

Dated: March 2nd, 1945.

PAUL J. McCORMICK,

Judge of the United States District Court, Southern District of California, Central Division.

Approved as to Form:

CHARLES H. CARR,

United States Attorney

E. H. MITCHELL and GEORGE M. BRYANT,

Assistant United States Attorneys, and

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue

By EUGENE HARPOLE

Attorneys for United States of America

BAILIE, TURNER AND LAKE,

By ALLEN T. LYNCH

Attorneys for H. F. Metcalf, Trustee in

Bankruptcy

W. C. SHELTON and

GEORGE W. BURCH, JR.,

By W. C. SHELTON

Attorneys for Security-First National Bank  
of Los Angeles.

Dated: February 27, 1945.

[Endorsed] : Filed Mar. 2, 1945. [247]

[Title of District Court and Cause.]

SUPERSEDEAS BOND ON APPEAL OF SECURITY-FIRST NATIONAL BANK OF LOS ANGELES.

Know All Men by These Presents, That we, Security-First National Bank of Los Angeles, a National Banking Association, as Principal, and Indemnity Insurance Company of North America, a Pennsylvania corporation having its principal office in Philadelphia, Pennsylvania, as Surety, are held and firmly bound unto the United States of America in the full and just sum of One Thousand Seven Hundred Fifty and no/100 Dollars (\$1750.00), to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Whereas, an order of Hon. Paul J. McCormick, Judge of the District Court of the United States, Southern District of California, Central Division, was entered on the 6th day of February, 1945, in the matter of F. P. Newport Corporation, Ltd., Bankrupt, Action No. 25308-M, confirming and approving the order of June 6, 1944 of Ernest R. Utley, Referee in Bankruptcy of said Court, and Security-First National Bank of Los Angeles, a secured creditor of said F. P. Newport Corporation, Ltd., has filed a notice of appeal to the Circuit [249] Court of Appeals for the Ninth Circuit *Court of Appeals* from said order entered on the 6th day of February, 1945.

And Whereas, it has been further ordered by Hon. Paul J. McCormick, Judge of the said District Court of the United States, that execution of any proceedings to enforce the order entered on the 6th day of February, 1945, confirming and approving the order of June 6,

1944 of Ernest R. Utley, Referee in Bankruptcy, be stayed pending the determination of the appeal of said Security-First National Bank of Los Angeles from such order, upon the filing by said Security-First National Bank of Los Angeles and approval by the Court of a bond in the sum of One Thousand Seven Hundred Fifty and no/100 Dollars (\$1750.00),

Now, Therefore, the condition of this obligation is such that if the said Security-First National Bank of Los Angeles, a National Banking Association, shall prosecute its appeal to effect, and if for any reason the appeal is dismissed, or the order appealed from is affirmed or modified, shall pay all costs and damages for delay, if any, as the said Circuit Court of Appeals for the Ninth Circuit *Court of Appeals* may adjudge and award, then this obligation shall be void; otherwise to remain in full force and effect.

Signed, sealed and dated this 1st day of March, 1945.

SECURITY-FIRST NATIONAL BANK OF LOS  
ANGELES

By R. T. ADAMS

Asst. Vice Pres.

INDEMNITY INSURANCE COMPANY OF  
NORTH AMERICA

By C. F. BATCHELDER

(Seal)

Attorney in Fact [251]

State of California,  
County of Los Angeles—ss.

On this 1 day of March in the year one thousand nine hundred and forty-five, before me F. D. Lanctot, a Notary Public in and for the County of Los Angeles, personally appeared C. F. Batchelder known to me to be the person whose name is subscribed to the within instrument as the

Attorney-in-fact of the Indemnity Insurance Company of North America, and acknowledged to me that he subscribed the name of the Indemnity Insurance Company of North America thereto as principal, and his own name as Attorney-in-fact.

(Seal)

F. D. LANCTOT

Notary Public in and for the County of  
Los Angeles, State of California.

My commission expires August 24, 1947. [250]

The foregoing bond is hereby approved as to form:

CHARLES H. CARR,

United States Attorney,

E. H. MITCHELL and

GEORGE M. BRYANT,

Assistant United States Attorneys, and

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue

By EUGENE HARPOLE

Attorneys for United States of America

BAILIE, TURNER AND LAKE

By ALLEN T. LYNCH

Attorneys for H. F. Metcalf, Trustee in

Bankruptcy.

W. C. SHELTON and

GEORGE W. BURCH,

By W. C. SHELTON,

Attorneys for Security-First National Bank of

Los Angeles

I hereby approve the foregoing bond this 2nd day of  
March, 1945.

PAUL J. McCORMICK

Judge of the United States District Court

[Endorsed: Filed Mar. 2, 1945. [251]]



[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the attorneys for the United States of America, claimant-appellee, the attorneys for the Security-First National Bank of Los Angeles, appellant, and the attorneys for H. F. Metcalf, Trustee in Bankruptcy for the above named Bankrupt, that subject to the approval of the Court, the time within which to file the record and docket the above entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including the 11th day of May, 1945.

Dated: This 5th day of April, 1945.

CHARLES H. CARR

United States Attorney

E. H. MITCHELL

Asst. United States Attorney

GEORGE M. BRYANT

Asst. United States Attorney

EUGENE HARPOLE

Special Attorney Bureau of  
Internal Revenue

By Eugene Harpole

Attorneys for Claimant-Appellee

BAILIE, TURNER & LAKE

By Norman A. Bailie

Attorneys for H. F. Metcalf, Trustee in  
Bankruptcy [262]

W. C. SHELTON and

GEORGE W. BURCH, JR.

By W. C. Shelton

Attorneys for Appellant Security-First  
National Bank of Los Angeles

It is so Ordered this 6th day of April, 1945.

PAUL J. McCORMICK

United States District Judge

[Endorsed]: Filed Apr. 6, 1945. [263]

[Title of District Court and Cause.]

DECISION AND ORDER PURSUANT TO MANDATE ON REVIEW OF REFEREE'S ORDER OF NOVEMBER 12, 1941, DISALLOWING THE CLAIM OF THE COLLECTOR OF INTERNAL REVENUE FOR 1938 AND 1939 FEDERAL INCOME TAXES.

The F. P. Newport Corporation, Ltd. was adjudicated a bankrupt by an Order of this Court on the 12th day of January, 1937. Thereafter, and on the 18th day of March, 1937, H. F. Metcalf was appointed Trustee in Bankruptcy. The Collector of Internal Revenue presented a claim in this proceeding for the aggregate sum of Nineteen Thousand, Three Hundred Sixty-three Dollars and Sixty-five Cents (\$19,363.65), alleged to be due from the Trustee in Bankruptcy as income taxes for the calendar years 1938 and 1939. On September 27, 1940, the Trustee in Bankruptcy filed an objection to the allowance of the claim submitted by the Collector of Internal Revenue. On March 17, 1941, the [3] Referee in Bankruptcy entered an Order sustaining the objections of the Trustee and disallowing the claim filed by the Collector of Internal Revenue for 1938 and 1939 income taxes in its entirety. On the 22nd day of April, 1941, the United States petitioned for a review of the Referee's Order of disallowance dated March 17, 1941, after having, on March 22, 1941, obtained an Order extending the time to file said review to and including the 23rd day of April, 1941. Thereafter, and on the 23rd day of October, 1941, the

District Court returned the matter to the Referee in Bankruptcy with instructions for the making and entry of Findings of Fact, Conclusions of Law and Order. The Referee in Bankruptcy entered his Findings of Fact, Conclusions of Law and Order on the 12th day of November, 1941, again sustaining the objections of the Trustee in Bankruptcy and disallowing the claim presented by the Collector of Internal Revenue in its entirety. Thereafter, and on the 18th day of November, 1941, the United States petitioned for a review of the Referee's Order of November 12, 1941. On the 17th day of December, 1941, this Court entered an Order confirming and approving the Findings of Fact, Conclusions of Law and Order of the Referee dated November 12, 1941, which disallowed in its entirety the claim presented for 1938 and 1939 income taxes. On November 23, 1942, the Circuit Court of Appeals for the Ninth Circuit rendered a decision reversing the Order of this Court of December 17, 1941. Thereafter, and on the 20th day of January, 1943, a Petition to the Supreme Court of the United States for a Writ of Certiorari was filed and thereafter said Petition for Certiorari was denied by the Supreme Court on March 1, 1943, and the Mandate from the said Circuit Court of Appeals for the Ninth Circuit, having on the 25th day of March, 1943, been spread upon the Minutes of this Court, [4]

Now, Therefore, by virtue of the law and by reason of the Mandate aforesaid, it is Considered, Ordered and Determined by the Court that the Trustee in Bankruptcy,

as such trustee, and the bankrupt estate is indebted to the United States of America as alleged and set forth in the said claim filed by the Collector of Internal Revenue in the sum of Nineteen Thousand, Three Hundred Sixty-three Dollars and Sixty-five Cents (\$19,363.65) for 1938 and 1939 income taxes, and the Referee's Order of November 12, 1941, disallowing the claim presented by the Collector of Internal Revenue on behalf of the United States is reversed and said claim is allowed in full together with interest thereon as provided by law.

Dated: This 8th day of April, 1943.

PAUL J. McCORMICK

United States District Judge.

Approved as to Form:

BAILEY, TURNER & LAKE

By ALLEN T. LYNCH

Attorneys for Trustee

Order entered Apr. 8-1943; docketed Apr. 8-1943, book 15, page 755. Edmund L. Smith, Clerk; by B. B. Hansen, Deputy.

Notation made in Bankruptcy Docket on Apr. 8, 1943 pursuant to Rule 79 (a) Civil Rules of Procedure. Edmund L. Smith, Clerk U. S. District Court, Southern District of California; by B. B. Hansen, Deputy.

[Endorsed]: Filed Apr. 8, 1943. [5]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the attorneys for the United States of America, claimant-appellee, the attorneys for the Security-First National Bank of Los Angeles, appellant, and the attorneys for H. F. Metcalf, Trustee in Bankruptcy for the above named bankrupt, that a Creditors' Involuntary Petition in Bankruptcy, in the Matter of F. P. Newport Corporation, Ltd., a corporation, an alleged Bankrupt, case No. 25-308 M, was filed in the above entitled court on March 19, 1935, and on January 12, 1937, the Honorable Wm. P. James, Judge of the above entitled court, after duly considering the said Creditors' Involuntary Petition in Bankruptcy, adjudicated F. P. Newport Corporation, Ltd., a corporation, a bankrupt.

It Is Further Stipulated, that this stipulation shall be included and contained in the record on appeal of the Security-First National Bank of Los Angeles, from the Order of the above entitled Court, entered February 6, 1945.

Dated: April 3, 1945.

CHARLES H. CARR

United States Attorney [1]

E. H. MITCHELL

Asst. United States Attorney

GEORGE M. BRYANT

Asst. United States Attorney

EUGENE HARPOLE

Special Attorney Bureau of  
Internal Revenue

By Eugene Harpole

Attorneys for Claimant-Appellee

BAILIE, TURNER & LAKE

By Allen T. Lynch

Attorneys for H. F. Metcalf, Trustee

W. C. SHELTON and

GEORGE W. BURCH,

By W. C. Shelton

Attorneys for Appellant Security-First

National Bank of Los Angeles

It Is So Ordered.

Dated: April 4th, 1945.

PAUL J. McCORMICK

Judge of the United States District Court

[Endorsed]: Filed Apr. 4, 1945.] [2]

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[Title of District Court and Cause.]

#### STIPULATION

It Is Hereby Stipulated by and between the attorneys for the United States of America, claimant appellee, the attorneys for the Security-First National Bank of Los Angeles, appellant, and the attorneys for H. F. Metcalf, Trustee in Bankruptcy for the above named Bankrupt, pursuant to the provisions of Section 75, subdivision (i) of the Federal Rules of Civil Procedure of the United States of America, that the transcript of the record in the Matter of United States of America, appellant -vs- H. F. Metcalf, appellee. United States Circuit Court of Appeals for the Ninth Circuit, No. 10130, marked "U. S. Appellee's Designation No. 2" shall be sent to the Ninth Circuit Court of Appeals, in lieu of copies, and that the clerk of the above entitled court shall transport said



transcript to said Ninth Circuit Court of Appeals for safekeeping, and which transcript shall in turn be returned by the clerk of said Circuit Court of Appeals to the clerk of the above District Court when the Judgment of said Circuit Court of Appeals in connection with the pending appeal of said appellant becomes final. [265]

Dated: March 28, 1945.

CHARLES H. CARR

United States Attorney

E. H. MITCHELL

Asst. United States Attorney

GEORGE M. BRYANT

Asst. United States Attorney

EUGENE HARPOLE

Special Attorney Bureau of  
Internal Revenue

By Eugene Harpole

Attorneys for Claimant-Appellee

BAILIE, TURNER & LAKE

By Allen T. Lynch

Attorneys for H. F. Metcalf, Trustee

W. C. SHELTON and

GEORGE W. BURCH, JR.

By George W. Burch, Jr.

Attorneys for Appellant Security-First  
National Bank of Los Angeles.

It Is So Ordered.

Dated: March 30th, 1945.

PAUL J. McCORMICK

Judge of United States District Court

[Endorsed]: Filed Mar. 30, 1945. [266]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 266 inclusive contain full, true and correct copies of Stipulation and Order filed April 4, 1945; Decision and Order Pursuant to Mandate on Review of Referee's Order of November 12, 1941, Disallowing the Claim of the Collector of Internal Revenue for 1938 and 1939 Federal Income Taxes; Referee's Certificate on Review; Petition for Order to Show Cause Why Trustee Should Not Be Directed to Pay 1938 and 1939 Federal Income Taxes; Answer of Security-First National Bank of Los Angeles to Petition of United States of America re Payment of 1938 and 1939 Income Taxes; Answer of H. F. Metcalf, as Trustee in Bankruptcy, to Petition of United States of America re Payment of 1938 and 1939 Income Taxes; Findings of Fact, Conclusions of Law and Order re Payment of Federal Income Taxes for Calendar Years 1938 and 1939; Order Extending Time to File Petition for Review; Petition for Review of Referee's Order; a portion of U. S. Exhibit No. 1; Trustee's Exhibit C; Security-First National Bank's Exhibits Nos. 1 to 5 inclusive; Findings of Fact, Conclusions of Law and Order of the District Judge Upon Review of the Referee's Order Dated June 6, 1944, Directing Payment of 1938 and 1939 Federal Income Taxes; Notice of Motion; Order Fixing Supersedeas Bond on Appeal; Notice of Appeal; Supersedeas Bond on Appeal; Appellant's Statement of Points to Be Urged Upon Appeal; Appellant's Designation of Contents of Record on Appeal; Stipulation and Order filed April 6; 1945; Appellee's Designa-

tion of Additional Contents of Record on Appeal and Stipulation and Order filed March 30, 1945, which, together with Original U. S. Exhibit 1 and copy of Reporter's Transcript transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$45.65 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 30 day of April, 1945.

[Seal]

EDMUND L. SMITH,

Clerk,

By Theodore Hocke  
Chief Deputy Clerk.

[Endorsed]: No. 11051. United States Circuit Court of Appeals for the Ninth Circuit. Security-First National Bank of Los Angeles, a national banking association, Appellant, vs. United States of America and H. F. Metcalf, Trustee in Bankruptcy for the Estate of F. P. Newport Corporation, Ltd., a corporation, bankrupt, Appellees. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California. Central Division.

Filed May 2, 1945.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals  
for the Ninth Circuit

In the Matter of

F. P. NEWPORT CORPORATION, LTD.,  
a corporation,

Bankrupt.

APPELLANT'S STATEMENT OF POINTS TO BE  
URGED ON APPEAL

1. That the District Court and the Referee in Bankruptcy erred in ordering H. F. Metcalf, Trustee in Bankruptcy for the above named Bankrupt, to pay to the Collector of Internal Revenue of the United States the Federal Income Tax assessed for the calendar years 1938 and 1939, and interest thereon, out of oil and gas royalties and surface rentals received or to be received by the said Trustee in Bankruptcy from properties, the record title to which stands in the name of the Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, for the reason that under and by virtue of that certain contract of January 12, 1937, as supplemented and modified, between the Security-First National Bank of Los Angeles, F. P. Newport Corporation, Ltd., a Bankrupt, and H. F. Metcalf, as Trustee in Bankruptcy of F. P. Newport Corporation, Ltd., a Bankrupt, the said oil and gas royalties and surface rentals received or to be received by the said Trustee in Bankruptcy were sequestered for the payment of the indebtedness of said Bankrupt corporation to the Security-First National Bank of Los Angeles, said debt being in excess of \$600,000.00

as of the date of said Referee's order; that said sequestered funds were to be free of any recourse thereto by the Trustee in Bankruptcy for the payment of any costs and expenses incurred by him as such Trustee, and free and clear of any claims thereto by any creditor of said Trustee in Bankruptcy, including the Collector of Internal Revenue and the United States Government for income taxes, and free from any general creditor's claims in the Bankruptcy Proceedings.

2. That the District Court and the Referee in Bankruptcy erred in ordering H. F. Metcalf, Trustee in Bankruptcy of the above named Bankrupt, for the purpose of making said payment of income taxes for the calendar years 1938 and 1939, and interest thereon, to use any funds on deposit in the special accounts carried in his name as said Trustee in Bankruptcy at the Head Office of the Security-First National Bank of Los Angeles, Sixth and Spring Streets, Los Angeles, California, and Citizens National Trust and Savings Bank, 5th and Spring Streets, Los Angeles, California, for the reason that under and by virtue of that certain contract of January 12, 1937, as supplemented and modified, said special accounts comprised and consisted only of the rents, issues and profits received or to be received by said Trustee in Bankruptcy from properties, the record title to which stood in the name of Security-First National Bank of Los Angeles as Trustee under its Trust D 7224, and which amounts were sequestered for the payment of the indebtedness due from F. P. Newport Corporation, Ltd., a bankrupt, to the Security-First National Bank of Los Angeles.

3. That the District Court and the Referee in Bankruptcy erred in denying the Petition and Prayer of Security-First National Bank of Los Angeles that said Trustee in Bankruptcy be required to pay over to the said Bank the oil and gas royalties and surface rentals received, or to be received, by the said Trustee in Bankruptcy from the properties the record title to which stands in the name of said Bank as Trustee under its Trust D 7224, for the reason that under and by virtue of said contract of January 12, 1937, as supplemented and modified, the said oil and gas royalties and surface rentals received or to be received by said Trustee in Bankruptcy from said properties were sequestered for the payment of the indebtedness due from said Bankrupt to the Security-First National Bank of Los Angeles.

4. That the Referee in Bankruptcy erred in holding that as to the Security-First National Bank of Los Angeles, the said Trustee in Bankruptcy was, during the calendar years of 1938 and 1939, operating property of said Bankrupt, the record title to which is held by the Security-First National Bank of Los Angeles, within the meaning of Section 52 (a) of the Revenue Code, and Section 19.52-a of Treasury Regulations 103, since the said Trustee in Bankruptcy's operation thereof was for liquidation purposes and as limited by said contract of January 12, 1937, as supplemented and modified.

5. That the District Court and the Referee in Bankruptcy erred in holding that the net income received by said Trustee in Bankruptcy during the calendar years 1938 and 1939, respectively, from properties, the record



title to which is held by Security-First National Bank of Los Angeles under its Trust D 7224, under and by virtue of said contract of January 12, 1937, as supplemented and modified, was subject to Federal Income tax within the meaning of Section 52 (a) of the Revenue Act of 1938, and of the Internal Revenue Code, for the reason that under the provisions of said contract, as supplemented and modified, the said net income was sequestered for the payment of indebtedness owed by the Bankrupt corporation to the Security-First National Bank of Los Angeles.

6. That the District Court and the Referee in Bankruptcy erred in holding that the properties, the record title to which is held by the Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, and as security for the obligation owed by the Bankrupt Corporation to said Bank, have been administered by said Trustee in Bankruptcy by and with the consent and approval of said Bank, and for the benefit of said Bank, for the reason that said Trustee in Bankruptcy's possession of said properties are for liquidation purposes only, as provided by the said contract of January 12, 1937, as supplemented and modified.

7. That the District Court and the Referee in Bankruptcy erred in holding that the income tax for the calendar years 1938 and 1939 was the result of the production of income, the full benefit and enjoyment of which was held by the Security-First National Bank of Los Angeles, for the reason that the income tax was levied against the said Trustee in Bankruptcy and not against the said Security-First National Bank of Los Angeles,

and for the further reason that said income tax, by virtue of said contract of January 12, 1937, as supplemented and modified, cannot be charged against oil and gas royalties and surface rentals received or to be received from properties, the record title to which is held by the said Bank.

8. That the District Court and the Referee in Bankruptcy erred in holding that the properties the record title to which is held by said Bank under its Trust D 7224, as security for the obligation owing to said Bank by the Bankrupt have been administered by said Trustee in Bankruptcy by and with the consent and approval of said Bank and for the benefit of said Bank.

9. That the District Court and the Referee in Bankruptcy erred in holding that the income taxes for the years 1938 and 1939 are incidental to said Bankruptcy administration, and a necessary part of the expense of operating, pursuing, collecting, and liquidating the properties and distributing the proceeds thereof, in so far as said Security-First National Bank of Los Angeles is concerned, for the reason that under the provisions of said contract of January 12, 1937, as supplemented and modified, all of the oil and gas royalties and surface rentals received and to be received by said Trustee in Bankruptcy, which includes all sums in the special bank accounts standing in the name of the Trustee in Bankruptcy, from properties the record title to which is held by the Security-First National Bank of Los Angeles, were sequestered for the payment of the indebtedness of said Bankrupt to said Bank.

10. That the District Court and the Referee in Bankruptcy erred in holding that Security-First National Bank

of Los Angeles, having the full benefit of the income which resulted in the assessment of said taxes, should pay the taxes out of that income, for the reason that the tax assessed for the years 1938 and 1939 were assessed against the said Trustee in Bankruptcy and for his operations and not against said Security-First National Bank of Los Angeles.

11. That the District Court and the Referee in Bankruptcy erred in holding that by the provisions of said agreement of January 12, 1937, as supplemented and modified, the oil and gas royalties received from Universal Consolidated Oil Company, lessee of property, the title to which stands in the name of Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, can be used for the payment of income taxes assessed against the Trustee in Bankruptcy and the Bankrupt Estate, for the reason that said contract, as supplemented and modified, provides that such income is sequestered for the benefit of the Security-First National Bank of Los Angeles, to be applied by said Bank on the indebtedness due it from said Bankrupt Corporation.

12. That the District Court and the Referee in Bankruptcy erred in holding that if the funds on deposit in said special bank accounts, which comprises the income collected from properties the record title to which stands in the name of the Security-First National Bank of Los Angeles, as Trustee under its Trust D 7224, are insufficient to pay said claim of the United States of America and the Collector of Internal Revenue for income taxes for the calendar years 1938-1939, plus interest thereon, such deficiency should be paid by the Trustee in Bankruptcy out of oil and gas royalties when and as received by him from Universal Consolidated Oil Company, for

the reason that such rents, issues and profits, by virtue of the provisions of said contract of January 12, 1937, as supplemented and modified, were sequestered for the payment of the indebtedness due said Bank by said Bankrupt corporation.

Dated: April 17, 1945.

W. C. SHELTON &  
GEORGE W. BURCH, JR.

By W. C. Shelton  
Attorneys for Appellant.

Received copy of the within Appellant's Statement this 19th day of April, 1945.

CHARLES H. CARR  
United States Attorney

E. H. MITCHELL  
Asst. United States Attorney

GEORGE M. BRYANT  
Asst. United States Attorney

EUGENE HARPOLE  
Special Attorney Bureau of  
Internal Revenue

By Eugene Harpole by B.H.  
Attorneys for Claimant-Appellee

BAILIE, TURNER AND LAKE  
By Allen E. Turner

Attorneys for H. F. Metcalf  
Trustee in Bankruptcy.

[Endorsed]: Filed May 2, 1945. Paul P. O'Brien.  
Clerk.